

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2013
First Extraordinary Session, 2013

Volume II
Chapters 96 - 212
Chapters 1 - 5

WEST VIRGINIA HOUSE OF DELEGATES
HONORABLE RICK THOMPSON
SPEAKER OF THE HOUSE

COMPILED AND PUBLISHED
UNDER THE DIRECTION
OF
GREGORY M. GRAY
CLERK OF THE HOUSE



OFFICE OF THE CLERK OF THE HOUSE
212 MAIN UNIT
STATE CAPITOL
CHARLESTON, WEST VIRGINIA

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR AND EXTRAORDINARY SESSIONS, 2013

OFFICERS

Speaker – Rick Thompson, Lavalette

Clerk – Gregory M. Gray, Charleston

Sergeant-at-Arms – George McClaskie, Charleston

Doorkeeper – Tom Hively, Chesapeake

District	Name	Address	Legislative Service
First	Ronnie D. Jones (D)	Weirton	80 th - 81 st
	Randy Swartzmiller (D)	New Cumberland	75 th - 81 st
Second	Phillip W. Diserio (D)	Follansbee	Appt. 1/23/12, 80 th ; 81 st
	Ryan Ferns (D)	Wheeling	80 th - 81 st
Third	Erikka Storch (R)	Wheeling	80 th - 81 st
	David E. Evans (R)	Moundsville	81 st
Fourth	Michael T. Ferro (D)	McMechen	79 th - 81 st
	Dave Pethel (D)	Hundred	69 th - 71 st ; 74 th - 81 st
Sixth	William Roger Romine (R)	Sistersville	75 th - 81 st
Seventh	Lynwood "Woody" Ireland (R)	Pullman	78 th - 81 st
	W. "Bill" Anderson, Jr. (R)	Williamstown	71 st - 81 st
Ninth	Anna, Border Sheppard (R)	Davisville	Appt. 6/21/11, 80 th ; 81 st
Tenth	Tom Azinger (R)	Vienna	72 nd - 81 st
	John Ellem (R)	Parkersburg	75 th - 81 st
	Daniel Puling (D)	Parkersburg	78 th - 81 st
Eleventh	Bob Ashley (R)	Spencer	67 th - 73 rd ; 75 th - 81 st
Twelfth	Steve Westfall (R)	Ripley	81 st
Thirteenth	Scott Cadle (R)	Lelart	81 st
	Brady Paxton (D)	Liberty	71 st ; Appt. 4/22/99, 74 th ; 75 th -81 st
Fourteenth	Jim Butler (R)	Henderson	81 st
Fifteenth	Troy Andes (R)	Hurricane	78 th - 81 st
Sixteenth	Kevin J. Craig (D)	Huntington	75 th - 81 st
	Carol Miller (R)	Huntington	78 th - 81 st
	Jim Morgan (D)	Huntington	69 th - 70 th ; Appt. 2/23/01, 75 th - 76 th - 81 st
Seventeenth	Doug Reynolds (D)	Huntington	78 th - 81 st
	Dale Stephens (D)	Huntington	75 th ; 77 th - 81 st
Eighteenth	Kelli Sobonya (R)	Huntington	76 th - 81 st
Nineteenth	Don C. Perdue (D)	Prichard	74 th - 81 st
	Rick Thompson (D)	Lavalette	65 th , Resigned 6/81; 76 th - 81 st
Twentieth	Justin J. Marcum (D)	Williamson	Appt. 1/18/12, 80 th ; 81 st
Twenty-first	Harry Keith White (D)	Gilbert	Appt. 9/11/92, 70 th ; 71 st - 81 st
Twenty-second	Jeff Eldridge (D)	Alum Creek	77 th - 79 th ; 81 st
	Josh Stowers (D)	Alum Creek	79 th - 81 st
Twenty-third	Joshua Nelson (R)	Danville	81 st
Twenty-fourth	Rupert Phillips, Jr. (D)	Lorado	80 th - 81 st
	Teddy "Ted" Tomblin (D)	Logan	81 st

MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Legislative Service
Twenty-fifth	Linda Goode Phillips (D)	Pineville	79 th - 81 st
Twenty-sixth	Clif Moore (D)	Thorpe	77 th - 81 st
Twenty-seventh	Joe Ellington (R)	Princeton	80 th - 81 st
	Marty Gearheart (R)	Bluefield	80 th - 81 st
	John H. Shott (R)	Bluefield	79 th , Re.signed 5/10; 81 st
Twenty-eighth	Roy G. Cooper (R)	Wayside	81 st
	John D. O'Neal, IV (R)	Beckley	80 th - 81 st
Twenty-ninth	Ricky Moye (D)	Crab Orchard	78 th - 81 st
Thirtieth	Linda Sumner (R)	Beckley	76 th - 81 st
Thirty-first	Lynne Carden Arvon (R)	Beckley	81 st
Thirty-second	David G. Perry (D)	Oak Hill	75 th - 81 st
	John Pino (D)	Oak Hill	67 th ; 71 st - 78 th ; 80 th - 81 st
	Margaret Anne Staggers (D)	Fayetteville	78 th - 81 st
Thirty-third	David A. Walker (D)	Clendenin	79 th - 81 st
Thirty-fourth	Brent Boggs (D)	Gassaway	73 rd - 81 st
Thirty-fifth	John B. McCuskey (R)	Charleston	81 st
	Eric Nelson (R)	Charleston	80 th - 81 st
	Suzette Raines (R)	St. Albans	81 st
	Doug Skaff, Jr. (D)	South Charleston	79 th - 81 st
	Nancy Peoples Guthrie (D)	Charleston	78 th - 81 st
Thirtysixth	Mark Hunt (D)	Charleston	72 nd - 74 th ; 77 th - 81 st
	Danny Wells (D)	Charleston	77 th - 81 st
Thirty-seventh	Meshea L. Poore (D)	Charleston	Appt. 12/18/09; 79 th ; 80 th - 81 st
Thirty-eighth	Patrick Lane (R)	Cross Lanes	77 th - 81 st
Thirty-ninth	Ron Walters (R)	Charleston	71 st - 73 rd ; 75 th - 81 st
Fortieth	Tim Annstead (R)	Elkview	Appt. 9/5/98; 73 rd ; 74 th - 81 st
Forty-first	Adam R. Young (D)	Summersville	81 st
Forty-second	George "Boogie" Amblor (R)	Fort Springs	81 st
	Ray Canterbury (R)	Ronceverte	75 th - 81 st
Forty-third	Denise L. Campbell (D)	Elkins	80 th - 81 st
	William G. Hartman (D)	Elkins	76 th - 81 st
Forty-fourth	Dana L. Lynch (D)	Webster Springs	81 st
Forty-fifth	Bill Hamilton (R)	Buckhannon	76 th - 81 st
Forty-sixth	Peggy Donaldson Smith (D)	Weston	79 th - 81 st
Forty-seventh	Mary M. Poling (D)	Moatsville	75 th - 81 st
Forty-eighth	Ron Fragale (D)	Clarksburg	Appt. 2/1/13; 81 st ; 70 th - 73 rd ; 75 th - 80 th
	Danny Hamrick (R)	Clarksburg	81 st
	Richard J. Jaquinta (D)	Clarksburg	76 th - 81 st
	Tim Miley (D)	Bridgeport	77 th - 81 st
	Mike Martypenny (D)	Grafton	79 th - 81 st
Fiftieth	Michael Caputo (D)	Fairmont	73 rd - 81 st
	Linda Longstreth (D)	Fairmont	77 th - 81 st
	Tim Manchin (D)	Fairmont	76 th - 81 st
Fifty-first	Anthony Barill (D)	Morgantown	80 th - 81 st
	Barbara Evans Fleischauer (D)	Morgantown	72 nd - 75 th ; 78 th - 81 st
	Cindy Frich (R)	Morgantown	76 th - 77 th ; 81 st
	Charlene Marshall (D)	Morgantown	74 th - 80 th
	Amanda Pasdon (R)	Morgantown	80 th - 81 st

MEMBERS OF THE HOUSE OF DELEGATES- Continued

District	Name	Address	Legislative Service
Fifty-second	Larry A. Williams (D)	Tunnelton	Appt. 10/8/93, 71 st ; 72 nd - 81 st
Fifty-third	Randy E. Smith (R)	Terra Alta	81 st
Fifty-fourth	Allen V. Evans (R)	Dorcas	70 th - 81 st
Fifty-fifth	Isaac Sponaugle (D)	Franklin	81 st
Fifty-sixth	Gary G. Howell (R)	Keyser	80 th - 81 st
Fifty-seventh	Ruth Rowan (R)	Points	77 th - 81 st
Fifty-eighth	Daryl E. Cowles (R)	Berkeley Springs	78 th - 81 st
Fifty-ninth	Larry D. Kump (R)	Falling Waters	80 th - 81 st
Sixtieth	Larry W. Faircloth (R)	Inwood	81 st
Sixty-first	Jason Barrett (D)	Martinsburg	81 st
Sixty-second	John Overington (R)	Martinsburg	67 th - 81 st
Sixty-third	Michael "Mike" Folk (R)	Martinsburg	81 st
Sixty-fourth	Eric L. Householder (R)	Martinsburg	80 th - 81 st
Sixty-fifth	Tiffany E. Lawrence (D)	Charles Town	79 th - 81 st
Sixty-sixth	Paul Espinosa (R)	Charles Town	81 st
Sixty-seventh	Stephen Skinner (D)	Shepherdstown	81 st

(D) Democrats - 54

(R) Republicans - 46

Total - 100

MEMBERS OF THE SENATE

REGULAR AND EXTRAORDINARY SESSIONS, 2013

OFFICERS

President – Jeffrey V. Kessler, Glen Dale

Clerk – Joseph M. Minard, Clarksburg

Sergeant-at-Arms – Howard Wellman, Bluefield

Doorkeeper – Anthony Gallo, Charleston

District	Name	Address	Legislative Service
First	Robert J. Fitzsimmons (D)	Wheeling	Appt. 12/26/12, 81 st
	Jack Yost (D)	Wellshurg	(House 76 th - 78 th); 79 th - 81 st
Second	Larry J. Edgell (D)	New Martinsburg	74 th - 81 st
	Jeffrey V. Kessler (D)	Glen Dale	Appt. 1/19/97, 73 rd ; 74 th - 81 st
Third	Donna J. Boley (R)	St. Marys	Appt. 5/14/85, 67 th ; 68 th - 81 st
	David C. Nohe (R)	Vienna	80 th - 81 st
Fourth	Mitch B. Carmichael (R)	Ripley	(House 75 th - 80 th); 81 st
	Mike Hnli (R)	Winfield	(House 72 nd - 74 th); 78 th - 81 st
Fifth	Evan H. Jenkins (D)	Humington	76 th - 81 st
	Robert H. Plymale (D)	Ceredo	71 st - 81 st
Sixth	H. Truman Chatfield (D)	Williamson	66 th - 81 st
	Bill Cole (R)	Bluefield	(House Appt. 5/28/10, 79 th); 81 st
Seventh	Art Kirkendoll (D)	Chapmanville	Appt. 11/14/11, 80 th ; 81 st
	Ron Stollings (D)	Madison	78 th - 81 st
Eighth	Chris Walters (R)	Poca	81 st
	Erik P. Wells (D)	Charleston	78 th - 81 st
Ninth	Mike Green (D)	Daniels	78 th - 81 st
	Daniel Halt (D)	Oceana	(House 79 th - 80 th); 81 st
Tenth	William Laird IV (D)	Oak Hill	(House 73 rd - 75 th); 79 th - 81 st
	Ronald F. Miller (D)	Lewisburg	80 th - 81 st
Eleventh	Clark Barnes (R)	Rundolph	77 th - 81 st
	Gregory A. Tucker (D)	Summersville	80 th - 81 st
Twelfth	Samuel J. Cann (D)	Bridgeport	(House 72 nd - 80 th); Appt. 1/16/13, 81 st
	Douglas Pacentine (D)	Sutton	79 th - 81 st
Thirteenth	Robert D. Beach (D)	Morgantown	(House, Appt. 5/98, 73 rd ; 74 th -79 th); 80 th - 81 st
	Roman W. Prezioso, Jr. (D)	Fairmont	(House 69 th - 72 nd); 73 rd - 81 st
Fourteenth	Dave Sypp (R)	Kingwood	78 th - 81 st
	Bob Williams (D)	Crafton	79 th - 81 st
Fifteenth	Craig P. Blair (R)	Martinsburg	(House 76 th - 79 th); 81 st
	Donald H. Cookman (D)	Romney	Appt. 1/23/13, 81 st
Sixteenth	Herb Snyder (D)	Shenandoah Junction	73 rd - 76 th ; 79 th - 81 st
	John R. Unger II (D)	Martinsburg	74 th - 81 st
Seventeenth	Brooks F. McCabe, Jr. (D)	Charleston	74 th - 81 st
	Corey Palumbo	Charleston	(House 76 th - 78 th); 79 th - 81 st

¹ Appointed December 26, 2012, to unexpired term of Orphy Klempa, who resigned December 10, 2012.

² Appointed January 16, 2013, to unexpired term of Joseph M. Minard, who resigned January 9, 2013.

³ Appointed January 23, 2013, to unexpired term of Walt Helmick, who resigned January 14, 2013.

(D) Democrats – 25

(R) Republicans – 9

Total – 34

HOUSE OF DELEGATES COMMITTEES

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2013

STANDING

AGRICULTURE

Walker (*Chair*), Manypenny (*Vice Chair*), Boggs, Diserio, Eldridge, Guthrie, Paxton, L. Phillips, M. Poling, Sponaugle, Swartzmiller, Wells, Williams, A. Evans (*Minority Chair*), Canterbury (*Minority Vice Chair*), Ambler, Anderson, Border, Folk, Hamilton, Ireland, Miller, Overington and Romine.

BANKING AND INSURANCE

Moore (*Chair of Banking*), Ferns (*Vice Chair of Banking*), Guthrie (*Chair of Insurance*), Hartman (*Vice Chair of Insurance*), Barrett, Hunt, Iaquinta, Manchin, Morgan, Perry, R. Phillips, Reynolds, Tomblin, Azinger (*Minority Chair of Banking*), E. Nelson (*Minority Vice Chair of Banking*), Ashley (*Minority Chair of Insurance*), Walters (*Minority Vice Chair of Insurance*). Andes, Frich, McCuskey, O'Neal, Pasdon, Shott and Westfall.

CONSTITUTIONAL REVISION

Fleischauer (*Chair*), Ferro (*Vice Chair*), Caputo, Fragale, Guthrie, Hunt, Lawrence, Manchin, Marshall, Moore, Morgan, Poore, Reynolds, Skinner, Overington (*Minority Chair*), Romine (*Minority Vice Chair*), Anderson, Andes, Armstead, Ellem, Householder, Kump, Lane, J. Nelson and O'Neal.

EDUCATION

M. Poling (*Chair*), Stowers (*Vice Chair*), Barill, Barrett, Campbell, Fragale, Lawrence, Perry, Pethel, Tomblin, Walker, Williams, Young, Pasdon (*Minority Chair*), Sumner (*Minority Vice Chair*), Ambler, Butler, Cooper, Espinosa, D. Evans, Hamrick, Raines, Rowan and Westfall.

HOUSE OF DELEGATES COMMITTEES

ENERGY, INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT AND SMALL BUSINESS

D. Poling (*Chair of Energy, Industry and Labor*), Diserio (*Vice Chair of Energy, Industry and Labor*), Skaff (*Chair of Economic Development and Small Business*), Campbell (*Vice Chair of Economic Development and Small Business*), Barrett, Caputo, Fleischauer, Manypenny, Marshall, R. Phillips, Poore, Skinner, Walker, Young, Sobonya (*Minority Chair of Energy, Industry and Labor*), Miller (*Minority Vice Chair of Energy, Industry and Labor*), Andes (*Minority Chair of Economic Development and Small Business*), Ellington (*Minority Vice Chair of Economic Development and Small Business*), Arvon, Faircloth, Frich, J. Nelson, Raines, R. Smith and Storch.

FINANCE

White (*Chair*), Reynolds (*Vice Chair*), Craig, Guthrie, Iaquina, Marshall, Moye, Perdue, Pethtel, L. Phillips, R. Phillips, D. Poling, Skaff, Williams, Anderson (*Minority Chair*), E. Nelson (*Minority Vice Chair*), Andes, Ashley, Canterbury, Cowles, A. Evans, Gearheart, Miller, Storch and Walters

GOVERNMENT ORGANIZATION

Morgan (*Chair*), Stephens (*Vice Chair*), Caputo, Diserio, Eldridge, Ferns, Hartman, Jones, Lynch, Paxton, P. Smith, Staggers, Swartzmiller, Howell (*Minority Chair*), Border (*Minority Vice Chair*), Arvon, Azinger, Cadle, Faircloth, Folk, Kump, J. Nelson, Romine and R. Smith.

HEALTH AND HUMAN RESOURCES

Perdue (*Chair*), Perry (*Vice Chair*), Campbell, Diserio, Eldridge, Ferns, Fleischauer, Lawrence, Marshall, Moore, Moye, Poore, Staggers, Ellington (*Minority Chair*), Householder (*Minority Vice Chair*), Arvon, Border, Cowles, Faircloth, Lane, Miller, Pasdon, Rowan and Sobonya.

HOUSE OF DELEGATES COMMITTEES

JUDICIARY

Miley (*Chair*), Manchin (*Vice Chair*), Ferro, Fleischauer, Hunt, Longstreth, Manypenny, Marcum, Moore, Pino, Poore, Skinner, Sponaugle, Wells, Ellem (*Minority Chair*), Lane (*Minority Vice Chair*), Frich, Hamilton, Householder, Ireland, McCuskey, O'Neal, Overington, Shott and Sobonya.

NATURAL RESOURCES

Craig (*Chair*), Pino (*Vice Chair*), Eldridge, Guthrie, Jones, Manypenny, Moore, Moye, L. Phillips, R. Phillips, Sponaugle, Swartzmiller, Tomblin, Wells, Hamilton (*Minority Chair*), Ireland (*Minority Vice Chair*), Anderson, Butler, Canterbury, Ellem, A. Evans, Romine, Shott, R. Smith and Walters.

PENSIONS AND RETIREMENT

Pethel (*Chair*), Jones (*Vice Chair*), Craig, Lynch, Stowers, Canterbury and Kump.

POLITICAL SUBDIVISIONS

Hunt (*Chair*), Lawrence (*Vice Chair*), Barill, Ferns, Fragale, Hartman, Jones, Marcum, Morgan, Moye, Perry, Sponaugle, Williams, Sumner (*Minority Chair*), Cowles (*Minority Vice Chair*), Cooper, Espinosa, Folk, Gearheart, Hamilton, Hamrick, Lane, McCuskey and Pasdon

ROADS AND TRANSPORTATION

Staggers (*Chair*), L. Phillips (*Vice Chair*), Barill, Boggs, Longstreth, Lynch, Marcum, D. Poling, Skaff, P. Smith, Stephens, Stowers, Walker, Wells, Cowles (*Minority Chair*), Gearheart (*Minority Vice Chair*), Ambler, Butler, Cadle, Ellington, Espinosa, D. Evans, Hamrick, Howell and Shott.

HOUSE OF DELEGATES COMMITTEES

RULES

Thompson (*Chair*), Boggs, Caputo, Marshall, Miley, Morgan, Paxton, M. Poling, Swartzmiller, White, Anderson, Armstead, Ashley, Cowles, Lane, Overington, Sobonya and Sumner.

SENIOR CITIZEN ISSUES

Williams (*Chair*), Moye (*Vice Chair*), Campbell, Ferro, Manypenny, Marshall, Moore, Perdue, Perry, Pethtel, Pino, Stephens, Young, Rowan (*Minority Chair*), O'Neal (*Minority Vice Chair*), Arvon, Ashley, Border, Faircloth, Householder, Raines, R. Smith, Sobonya, Sumner and Westfall.

VETERANS' AFFAIRS AND HOMELAND SECURITY

Iaquinta (*Chair of Veterans' Affairs*), Longstreth (*Vice Chair of Veterans' Affairs*), Paxton (*Chair of Homeland Security*), Eldridge (*Vice Chair of Homeland Security*), Barill, Campbell, Ferro, Fleischauer, Jones, Pethtel, P. Smith, Staggers, Stephens, Azinger (*Minority Chair of Veterans' Affairs*), Rowan (*Minority Vice Chair Veterans' Affairs*), Ashley (*Minority Chair Homeland Security*), Storch (*Minority Vice Chair of Homeland Security*), Armstead, Cadle, Cooper, D. Evans, Howell, Ireland, E. Nelson and J. Nelson.

ENROLLED BILLS

Wells (*Chair*), Barill (*Vice Chair*), Ferro and Overington.

SENATE COMMITTEES

COMMITTEES OF THE SENATE Regular Session, 2013

STANDING

AGRICULTURE AND RURAL DEVELOPMENT

Miller (*Chair*), Williams (*Vice Chair*), Beach, Cann, Cookman, D. Hall, Laird, Tucker, Carmichael, Nohe and Sypolt.

BANKING AND INSURANCE

Tucker (*Chair*), Fitzsimmons (*Vice Chair*), Chafin, Facemire, Green, D. Hall, Jenkins, McCabe, Palumbo, Prezioso, M. Hall, Nohe and Walters.

CONFIRMATIONS

Green (*Chair*), Facemire (*Vice Chair*), Chafin, Miller, Plymale, Snyder, Yost, Cole and Sypolt.

ECONOMIC DEVELOPMENT

Williams (*Chair*), Cann (*Vice Chair*), Beach, Cookman, Kirkendoll, McCabe, Prezioso, Snyder, Stollings, Wells, Barnes, Blair, Sypolt and Walters.

EDUCATION

Plymale (*Chair*), Wells (*Vice Chair*), Beach, Chafin, Edgell, D. Hall, Laird, Stollings, Tucker, Unger, Barnes, Boley, Carmichael and Cole.

ENERGY, INDUSTRY AND MINING

Facemire (*Chair*), Kirkendoll (*Vice Chair*), Beach, Cann, Green, Jenkins, Plymale, Snyder, Stollings, Yost, Barnes, Nohe and Sypolt.

SENATE COMMITTEES

ENROLLED BILLS

Cookman (*Chair*), Edgell, Fitzsimmons, Palumbo and Cole.

FINANCE

Prezioso (*Chair*), Facemire (*Vice Chair*), Chafin, Edgell, Green, Laird, McCabe, Plymale, Stollings, Unger, Wells, Yost, Barnes, Blair, Boley, M. Hall and Sypolt.

GOVERNMENT ORGANIZATION

Snyder (*Chair*), Miller (*Vice Chair*), Cann, Cookman, Fitzsimmons, Green, Jenkins, Kirkendoll, Williams, Yost, Blair, Boley, Cole and Sypolt.

HEALTH AND HUMAN RESOURCES

Stollings (*Chair*), Jenkins (*Vice Chair*), Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Tucker, Yost, Boley, M. Hall and Walters.

INTERSTATE COOPERATION

Kirkendoll (*Chair*), Cookman (*Vice Chair*), D. Hall, Palumbo, Wells, Blair and Nohe.

JUDICIARY

Palumbo (*Chair*), Tucker (*Vice Chair*), Beach, Cann, Cookman, Fitzsimmons, D. Hall, Jenkins, Kirkendoll, Miller, Snyder, Unger, Williams, Carmichael, Cole, Nohe and Walters.

LABOR

Yost (*Chair*), D. Hall (*Vice Chair*), Chafin, Facemire, Fitzsimmons, McCabe, Miller, Wells, Barnes, Blair and Walters.

SENATE COMMITTEES

MILITARY

Wells (*Chair*), Yost (*Vice Chair*), Edgell, Fitzsimmons, Jenkins, Laird, Tucker, Boley and Carmichael.

NATURAL RESOURCES

Laird (*Chair*), Edgell (*Vice Chair*), Beach, Cookman, Facemire, Green, McCabe, Prezioso, Snyder, Williams, M. Hall, Nohe and Walters.

PENSIONS

Jenkins (*Chair*), McCabe (*Vice Chair*), Cann, Chafin, Edgell, Carmichael and M. Hall.

RULES

Kessler (*Chair*), Edgell, Palumbo, Plymale, Prezioso, Snyder, Stollings, Unger, Barnes, Boley and M. Hall.

TRANSPORTATION AND INFRASTRUCTURE

Beach (*Chair*), Kirkendoll (*Vice Chair*), Facemire, Fitzsimmons, McCabe, Plymale, Williams, Barnes and Cole.

CHAPTER 96

**(Com. Sub. for H. B. 2491 - By Delegates Iaquina,
Fleischauer, Longstreth, Stephens and Azinger)**

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-4-10, relating to providing for uniform course completion for certain higher education students performing certain military service; requiring the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education to promulgate a joint rule; setting forth elements the rule is to address; and providing a definition for the term “called to military duty”.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18B-4-10, to read as follows:

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-10. Course completion for students called to military duty; rule required.

- 1 (a) As used in this section, “called to military duty” means
- 2 called or ordered to state or federal active service, inactive-duty
- 3 training or annual training in any active duty or reserve
- 4 component of the Armed Forces of the United States or of the
- 5 National Guard of this state or any other state.

6 (b) In accordance with the provisions of article three-a,
7 chapter twenty-nine-a of this code, the commission and council
8 jointly shall propose and implement a rule providing for uniform
9 course completion for students who are enrolled at the state
10 institutions of higher education under their respective
11 jurisdictions when those students are called to military duty.

12 (1) The rule shall be as uniform among the institutions as is
13 practicable and shall take into consideration the unique
14 conditions or circumstances of each institution.

15 (2) The intent of the rule is to ensure that enrolled students
16 who are called to military duty are afforded a fair and efficient
17 procedure of withdrawing from classes, completing course work
18 or securing a leave of absence from course attendance, when
19 feasible. The rule also shall provide for maintaining the
20 academic integrity of the course work in a manner that is
21 reasonably accommodating to the student under the
22 circumstances.

23 (3) The commission and council shall consider and include
24 the following elements when developing the rule:

25 (A) Discipline appropriate options which allow a student to
26 withdraw from courses without penalty; earn credit for work
27 completed in a course; receive an incomplete grade and make up
28 the course work at a later time; or secure a leave of absence from
29 course attendance;

30 (B) For students who withdraw from classes during an
31 academic term and who do not receive full credit for completing
32 classes in which they are enrolled, provision for obtaining a full
33 or partial refund of tuition, fees and room and board fees paid to
34 the institution; and

35 (C) Other measures as the commission and council consider
36 necessary or effective to support, accommodate and encourage
37 the students to continue and successfully complete their
38 education programs.

39 (c) The rule required by this section is superceded by and
40 may not conflict in any way with the following provisions:

41 (1) Educational leave of absence for active duty National
42 Guard or other reserve components of the Armed Forces as set
43 forth in section one-a, article one-f, chapter fifteen of this code
44 for students who are subject to these provisions; and

45 (2) Applicable federal laws, rules or regulations.

CHAPTER 97

(H. B. 3104 - By Delegates M. Poling and Stowers)

[Passed April 9, 2013; in effect from passage.]
[Approved by the Governor on April 18, 2013.]

AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing certain legislative rules regarding higher education; authorizing legislative rules for the Higher Education Policy Commission regarding authorization of degree granting institutions and human resources administration; and authorizing legislative rules for the Council for Community and Technical College Education regarding authorization of degree granting institutions and human resources administration.

Be it enacted by the Legislature of West Virginia:

That §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-2. Authorizing rules of Higher Education Policy Commission.

1 (a) The legislative rule filed in the State Register on October
2 15, 2004, relating to the Higher Education Policy Commission
3 (Underwood-Smith Teacher Scholarship Program rule) is
4 authorized.

5 (b) The legislative rule filed in the State Register on October
6 15, 2004, relating to the Higher Education Policy Commission
7 (West Virginia Engineering, Science and Technology
8 Scholarship Program rule) is authorized.

9 (c) The legislative rule filed in the State Register on October
10 15, 2004, relating to the Higher Education Policy Commission
11 (Medical Education Fee and Medical Student Loan Program
12 rule) is authorized.

13 (d) The legislative rule filed in the State Register on October
14 27, 2005, relating to the Higher Education Policy Commission
15 (Authorization of degree-granting institutions) is authorized.

16 (e) The legislative rule filed in the State Register on August
17 23, 2006, relating to the Higher Education Policy Commission
18 (West Virginia Higher Education Grant Program) is authorized.

19 (f) The legislative rule filed in the State Register on January
20 4, 2008, relating to the Higher Education Policy Commission
21 (Providing Real Opportunities for Maximizing In-state Student
22 Excellence - PROMISE) is authorized.

23 (g) The legislative rule filed in the State Register on August
24 25, 2008, relating to the Higher Education Policy Commission
25 (Research Trust Program) is authorized.

26 (h) The legislative rule filed in the State Register on January
27 8, 2009, relating to the Higher Education Policy Commission
28 (Guidelines for Governing Boards in Employing and Evaluating
29 Presidents) is authorized.

30 (i) The legislative rule filed in the State Register on
31 September 10, 2008, relating to the Higher Education Policy
32 Commission (Medical Student Loan Program) is authorized,
33 with the following amendment:

34 On page 2, subsection 5.1, following the words “financial aid
35 office” by inserting a new subdivision 5.1.3 to read as follows:
36 “United States citizenship or legal immigrant status while
37 actively pursuing United States citizenship.”

38 (j) The legislative rule filed in the State Register on
39 December 1, 2008, relating to the Higher Education Policy
40 Commission (West Virginia Higher Education Grant Program)
41 is authorized.

42 (k) The legislative rule filed in the State Register on January
43 26, 2009, relating to the Higher Education Policy Commission
44 (Accountability System) is authorized.

45 (l) The legislative rule filed in the State Register on May 20,
46 2009, relating to the Higher Education Policy Commission
47 (Energy and Water Savings Revolving Loan Fund Program) is
48 authorized.

49 (m) The legislative rule filed in the State Register on January
50 27, 2010, relating to the Higher Education Policy Commission
51 (Providing Real Opportunities for Maximizing In-state Student
52 Excellence - PROMISE) is authorized.

53 (n) The legislative rule filed in the State Register on
54 December 8, 2010, relating to the Higher Education Policy
55 Commission (Authorization of Degree Granting Institutions) is
56 authorized.

57 On page 28, subsection 9.1.b, following the words “Good
58 cause shall consist of” by inserting the words “any one or more
59 of the following”.

60 (o) The legislative rule filed in the State Register on
61 December 12, 2011, relating to the Higher Education Policy
62 Commission (Tuition and Fee Policy) is authorized.

63 (p) The legislative rule filed in the State Register on August
64 10, 2012, relating to the Higher Education Policy Commission
65 (A uthorization of Degree Granting Institutions) is authorized.

66 (q) The legislative rule filed in the State Register on August
67 10, 2012, relating to the Higher Education Policy Commission
68 (Annual Reauthorization of Degree Granting Institutions) is
69 authorized.

70 (r) The legislative rule filed in the State Register on March
71 20, 2013, relating to the Higher Education Policy Commission
72 (Human Resources Administration) is authorized.

**§18B-17-3. Authorizing rules of the Council for Community and
Technical College Education.**

1 (a) The legislative rule filed in the State Register on
2 September 29, 2004, relating to the West Virginia Council for
3 Community and Technical College Education (performance
4 indicators rule) is authorized.

5 (b) The legislative rule filed in the State Register on October
6 13, 2005, relating to the West Virginia Council for Community

7 and Technical College Education (Authorization of
8 degree-granting institutions) is authorized.

9 (c) The legislative rule filed in the State Register on October
10 30, 2006, relating to the West Virginia Council for Community
11 and Technical College Education (Workforce Development
12 Initiative Program) is authorized.

13 (d) The legislative rule filed in the State Register on
14 December 4, 2008, relating to the West Virginia Council for
15 Community and Technical College Education (Employing and
16 Evaluating Presidents) is authorized.

17 (e) The legislative rule filed in the State Register on
18 December 23, 2008, relating to the West Virginia Council for
19 Community and Technical College Education (Performance
20 Indicators) is authorized.

21 (f) The legislative rule filed in the State Register on February
22 5, 2009, relating to the West Virginia Council for Community
23 and Technical College Education (Finance) is authorized.

24 (g) The legislative rule filed in the State Register on
25 February 5, 2009, relating to the West Virginia Council for
26 Community and Technical College Education (Accountability
27 System) is authorized.

28 (h) The legislative rule filed in the State Register on June 15,
29 2011, relating to the West Virginia Council for Community and
30 Technical College Education (Workforce Development Initiative
31 Program) is authorized.

32 (i) The legislative rule filed in the State Register on October
33 26, 2011, relating to the West Virginia Council for Community
34 and Technical College Education (Tuition and Fees) is
35 authorized.

36 (j) The legislative rule filed in the State Register on October
37 17, 2012, relating to the West Virginia Council for Community
38 and Technical College Education (Authorization of Degree
39 Granting Institutions) is authorized.

40 (k) The legislative rule filed in the State Register on October
41 17, 2012, relating to the West Virginia Council for Community
42 and Technical College Education (Annual Reauthorization of
43 Degree Granting Institutions) is authorized.

44 (l) The legislative rule filed in the State Register on March
45 21, 2013, relating to the West Virginia Council for Community
46 and Technical College Education (Human Resources
47 Administration) is authorized.



CHAPTER 98

**(Com. Sub. for S. B. 553 - By Senators Beach,
McCabe, Miller and Stollings)**

[Passed April 11, 2013; in effect from passage.]

[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §17-2D-2 and §17-2D-5 of the Code of West Virginia, 1931, as amended, all relating to the continuation of the Highway Design-Build Pilot Program; changing the name to the Highway Design-Build Program; removing the sunset date of the program; modifying limitations on design-build projects; requiring identification of design-build projects; modifying reporting requirements; and requiring annual reporting.

Be it enacted by the Legislature of West Virginia:

That §17-2D-2 and §17-2D-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2D. HIGHWAY DESIGN-BUILD PROGRAM.**§17-2D-2. Highway Design-Build Program.**

1 (a) Notwithstanding any provision of this code to the
2 contrary, the Commissioner of the West Virginia Division of
3 Highways may expedite the construction of projects by
4 combining the design and construction elements of a highway or
5 bridge project into a single contract as provided in this article.

6 (b) The Division of Highways may expend no more than \$50
7 million in each year in the program: *Provided*, That if any of the
8 \$50 million is unused in one year, the remaining amount may be
9 applied to the following year's amount: *Provided, however*, That
10 the total aggregate amount to be expended may not exceed \$150
11 million in any one year.

12 (c) A design-build project may be let to contract only in
13 accordance with the commissioner's established policies and
14 procedures concerning design-build projects.

15 (d) Projects receiving funding above the amount of federal
16 core funding as appropriated to the state by formula in a federal
17 highway authorization, currently titled MAP-21, may utilize the
18 program, but shall not be included in expenditure limits provided
19 by subsection (b) of this section.

§17-2D-5. Report to the Legislature.

1 On or before January 15, 2014, and annually thereafter, the
2 commissioner shall prepare and submit to the Joint Committee
3 on Government and Finance a written report evaluating the
4 experience of the Division of Highways with each project
5 completed during the prior calendar year, including whether the
6 division realized any cost or time savings, the number and cost
7 of change orders, the quality of work performed, the number of
8 bids received and other issues the commissioner considers

9 appropriate: *Provided*, That the report submitted on or before
10 January 15, 2014, shall contain such information as to all design-
11 build projects that have been completed under the program prior
12 to 2014.

CHAPTER 99

(S. B. 652 - By Senators Snyder, Jenkins,
Boley and Tucker)

[Passed April 13, 2013; in effect from passage.]

[Approved by the Governor on May 1, 2013.]

AN ACT to amend and reenact §29-3-5b of the Code of West Virginia, 1931, as amended, relating to criminal background checks for home inspector license applicants; and providing rule-making authority to the State Fire Commission to require criminal background checks for home inspector license applicants.

Be it enacted by the Legislature of West Virginia:

That §29-3-5b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5b. Promulgation of rules and statewide building code.

1 (a) The State Fire Commission shall propose rules for
2 legislative approval in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code to safeguard life and
4 property and to ensure the quality of construction of all
5 structures erected or renovated throughout this state through the
6 adoption of a State Building Code. The rules shall be in

7 accordance with standard safe practices so embodied in widely
8 recognized standards of good practice for building construction
9 and all aspects related thereto and have force and effect in those
10 counties and municipalities adopting the State Building Code:
11 *Provided*, That each county or municipality may adopt the code
12 to the extent that it is only prospective and not retroactive in its
13 application.

14 (b) The State Fire Commission has authority to propose rules
15 for legislative approval in accordance with the provisions of
16 article three, chapter twenty-nine-a of this code, regarding
17 building construction, renovation and all other aspects as related
18 to the construction and mechanical operations of a structure. The
19 rules shall be known as the State Building Code.

20 (c) The State Fire Commission shall propose a rule for
21 legislative approval in accordance with the provisions of article
22 three, chapter twenty-nine-a of this code to include the following
23 building energy codes in the State Building Code:

24 (1) The 2009 edition of the International Energy
25 Conservation Code for residential buildings or other building
26 energy code or codes for residential buildings that meets or
27 exceeds equivalent energy savings; and

28 (2) The ANSI/ASHRAE/IESNA Standard 90.1-2007
29 building energy code for commercial buildings or other building
30 energy code or codes for commercial buildings that meets or
31 exceeds equivalent energy savings.

32 (d) (1) The State Fire Commission has authority to propose
33 rules for legislative approval, in accordance with the provisions
34 of article three, chapter twenty-nine-a of this code, establishing
35 state standards and fee schedules for the licensing, registration,
36 certification, regulation and continuing education of persons
37 which will conduct inspections relating to the State Building
38 Code, which include, but are not limited to, building code
39 officials, inspectors, plans examiners and home inspectors.

40 (2) The State Fire Commission shall propose rules for
41 legislative approval requiring applicants for home inspector
42 licensing, registration or certification to submit to a state and
43 national criminal history record check as set forth in this section
44 and may deny licensing, registration or certification based upon
45 the results of the criminal history record check.

46 (e) The State Fire Commission has authority to establish
47 advisory boards as it deems appropriate to encourage
48 representative participation in subsequent rulemaking from
49 groups or individuals with an interest in any aspect of the State
50 Building Code or related construction or renovation practices.

51 (f) For the purpose of this section, the term “building code”
52 is intended to include all aspects of safe building construction
53 and mechanical operations and all safety aspects related thereto.
54 Whenever any other state law, county or municipal ordinance or
55 regulation of any agency thereof is more stringent or imposes a
56 higher standard than is required by the State Building Code, the
57 provisions of the state law, county or municipal ordinance or
58 regulation of any agency thereof governs if they are not
59 inconsistent with the laws of West Virginia and are not contrary
60 to recognized standards and good engineering practices. In any
61 question, the decision of the State Fire Commission determines
62 the relative priority of any such state law, county or municipal
63 ordinance or regulation of any agency thereof and determines
64 compliance with State Building Code by officials of the state,
65 counties, municipalities and political subdivisions of the state.

66 (g) Enforcement of the provisions of the State Building Code
67 is the responsibility of the respective local jurisdiction. Also, any
68 county or municipality may enter into an agreement with any
69 other county or municipality to provide inspection and
70 enforcement services: *Provided*, That any county or municipality
71 may adopt the State Building Code with or without adopting the
72 BOCA National Property Maintenance Code.

73 (h) After the State Fire Commission has promulgated rules
74 as provided in this section, each county or municipality
75 intending to adopt the State Building Code shall notify the State
76 Fire Commission of its intent.

77 (i) The State Fire Commission may conduct public meetings
78 in each county or municipality adopting the State Building Code
79 to explain the provisions of the rules.

80 (j) The provisions of the State Building Code relating to the
81 construction, repair, alteration, restoration and movement of
82 structures are not mandatory for existing buildings and structures
83 identified and classified by the State Register of Historic Places
84 under the provisions of section eight, article one of this chapter
85 or the National Register of Historic Places, pursuant to 16 U. S.
86 C. §470a. Prior to renovations regarding the application of the
87 State Building Code, in relation to historical preservation of
88 structures identified as such, the authority having jurisdiction
89 shall consult with the Division of Culture and History, State
90 Historic Preservation Office. The final decision is vested in the
91 State Fire Commission. Additions constructed on a historic
92 building are not excluded from complying with the State
93 Building Code.

CHAPTER 100

**(S. B. 194 - By Senators Stollings, Jenkins, Kirkendoll,
Laird, Miller, Palumbo, Plymale, Prezioso, Tucker,
Yost, Boley and M. Hall)**

[Passed April 13, 2013; in effect from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to repeal §9-2-9b of the Code of West Virginia, 1931, as amended; and to amend and reenact §9-2-6 of said code, relating

to contract procedures for Department of Health and Human Resources; providing that previous contracts awarded would remain in full force and effect; and eliminating Department of Health and Human Resources' exemption for contracts for the Medicaid program from purchasing requirements.

Be it enacted by the Legislature of West Virginia:

That §9-2-9b of the Code of West Virginia, as amended, be repealed; and that §9-2-6 of said code be amended and reenacted, all to read as follows:

**ARTICLE 2. COMMISSIONER OF HUMAN SERVICES;
POWER, DUTIES AND RESPONSIBILITIES
GENERALLY.**

§9-2-6. Powers of secretary.

1 Within limits of state appropriations and federal grants and
2 subject to provisions of state and federal laws and regulations, the
3 secretary, in addition to all other powers, duties and
4 responsibilities granted and assigned to that office in this chapter
5 and elsewhere by law, is authorized to:

6 (1) Promulgate, amend, revise and rescind department rules
7 respecting the organization and government of the department and
8 the execution and administration of those powers, duties and
9 responsibilities granted and assigned by this chapter and
10 elsewhere by law to the department and the secretary.

11 (2) Promulgate, amend, revise and rescind department rules
12 and regulations respecting qualifications for receiving the
13 different classes of welfare assistance consistent with or permitted
14 by federal laws, rules and policies, but not inconsistent with state
15 law: *Provided*, That rules and policies respecting qualifications
16 shall permit the expenditure of state funds to pay for care
17 rendered in any birthing center licensed under the provisions of

18 article two-e, chapter sixteen of this code by a licensed nurse
19 midwife or midwife as this occupation is defined in section one,
20 article fifteen, chapter thirty of this code and which care is within
21 the scope of duties for such licensed nurse midwife or midwife as
22 permitted by the provisions of section seven of said article.

23 (3) Obtain by purchase or lease grounds, buildings, office or
24 other space, equipment, facilities and services as may be
25 necessary for the execution and administration of those powers,
26 duties and responsibilities granted and assigned by this chapter
27 and elsewhere by law to the department and the secretary.

28 (4) Sign and execute in the name of the state by the State
29 Department of Health and Human Resources any contract or
30 agreement with the federal government or its agencies, other
31 states, political subdivisions of this state, corporations,
32 associations, partnerships or individuals: *Provided*, That the
33 provisions of article three, chapter five-a are followed.

34 (5) ~~Sign and execute~~ a contract to implement professional
35 health care, managed care, actuarial and health care-related
36 monitoring, quality review/utillization, claims processing and
37 independent professional consultant contracts for the Medicaid
38 program: *Provided*, That the provisions of article three, chapter
39 five-a are followed: *Provided, however*, That a contract awarded
40 under the agency purchasing process from April 1, 2009, to
41 January 2, 2013. remains in full force and effect and the secretary
42 retains sole authority to review, approve and issue changes to
43 contracts issued under the former purchasing process, and is
44 responsible for challenges, disputes, protests and legal actions
45 related to such contracts.

46 (6) Establish such special funds as may be required by the
47 federal Social Security Act, as amended, or by any other Act or
48 Acts of Congress, in order for this state to take full advantage of
49 the benefits and provisions thereof relating to the federal-state
50 assistance and federal assistance programs administered by the

51 department and to make payments into and disbursements out of
52 any such special fund or funds in accordance with the
53 requirements of the federal Social Security Act, as amended, or
54 any other Act or Acts of Congress, and in accordance with
55 applicable state law and the objects and purposes of this chapter.
56 In addition, the State Department of Health and Human
57 Resources, through the secretary, is hereby authorized to accept
58 any and all gifts or grants, whether in money, land, services or
59 materials, which gift or gifts, if in the form of moneys, shall be
60 placed in a separate fund and expended solely for the purpose of
61 public assistance programs. No part of this special fund shall
62 revert to the General Revenue Funds of this state. No expenses
63 incurred pursuant to this special fund shall be a charge against
64 the General Funds of this state.

65 (7) Establish within the department an Office of Inspector
66 General for the purpose of conducting and supervising
67 investigations and for the purpose of providing quality control
68 for the programs of the department. The Office of Inspector
69 General shall be headed by the Inspector General who shall
70 report directly to the secretary. Neither the secretary nor any
71 employee of the department may prevent, inhibit or prohibit the
72 Inspector General or his or her employees from initiating,
73 carrying out or completing any investigation, quality control
74 review or other activity oversight of public integrity by the
75 Office of the Inspector General. The secretary shall place within
76 the Office of Inspector General any function he or she deems
77 necessary. Qualification, compensation and personnel practice
78 relating to the employees of the Office of the Inspector General,
79 including that of the position of Inspector General, shall be
80 governed by the classified service provisions of article six,
81 chapter twenty-nine of this code and rules promulgated
82 thereunder. The Inspector General shall supervise all personnel
83 of the Office of Inspector General.

84 (8) Provide at department expense a program of continuing
85 professional, technical and specialized instruction for the
86 personnel of the department.

87 (9) Pay from available funds all or part of the reasonable
88 expenses incurred by a person newly employed by the
89 department in moving his household furniture, effects and
90 immediate family from his or her place of residence in this state
91 to his or her place of employment in this state; and to pay from
92 available funds all or part of the reasonable expenses incurred by
93 a department employee in moving his or her household furniture,
94 effects and immediate family as a result of a reassignment of the
95 employee which is considered desirable, advantageous to and in
96 the best interests of the state, but no part of the moving expenses
97 of any one such employee shall be paid more frequently than
98 once in twelve months or for any movement other than from one
99 place of employment in this state to another place of
100 employment in this state.

101 (10) Establish a program to provide reimbursement to
102 employees of the department whose items of personal property,
103 as defined by the department by policy, are damaged during the
104 course of employment or other work-related activity as a result
105 of aggressive behavior by a client or patient receiving services
106 from the department: *Provided*, That such reimbursement is
107 limited to a maximum amount of \$250.00 per claim.

108 (11) Establish and maintain such institutions as are necessary
109 for the temporary care, maintenance and training of children and
110 other persons.

111 (12) Prepare and submit state plans which will meet the
112 requirements of federal laws, rules governing federal-state
113 assistance and federal assistance and which are not inconsistent
114 with state law.

115 (13) Organize within the department a Board of Review,
116 consisting of a Chairman appointed by the secretary and as many
117 assistants or employees of the department as may be determined
118 by the secretary and as may be required by federal laws and rules
119 respecting state assistance, federal-state assistance and federal
120 assistance, such Board of Review to have such powers of a
121 review nature and such additional powers as may be granted to
122 it by the secretary and as may be required by federal laws and
123 rules respecting federal-state assistance and federal assistance.

124 (14) Provide by rules review and appeal procedures within
125 the Department of Health and Human Resources as may be
126 required by applicable federal laws and rules respecting state
127 assistance, federal-state assistance and federal assistance and as
128 will provide applicants for, and recipients of all, classes of
129 welfare assistance an opportunity to be heard by the Board of
130 Review, a member thereof or individuals designated by the
131 board, upon claims involving denial, reduction, closure, delay or
132 other action or inaction pertaining to public assistance.

133 (15) Provide by rules, consistent with requirements of
134 applicable federal laws and rules, application forms and
135 application procedures for the various classes of public
136 assistance.

137 (16) Provide locations for making applications for the
138 various classes of public assistance.

139 (17) Provide a citizen or group of citizens an opportunity to
140 file objections and to be heard upon objections to the grant of
141 any class of public assistance.

142 (18) Delegate to the personnel of the department all powers
143 and duties vested in the secretary, except the power and authority
144 to sign contracts and agreements.

145 (19) Make such reports in such form and containing such
146 information as may be required by applicable federal laws and
147 rules respecting federal-state assistance and federal assistance.

148 (20) Invoke any legal, equitable or special remedies for the
149 enforcement of the provisions of this chapter.

CHAPTER 101

**(H. B. 2814 - By Delegates Fleischauer, Poore,
Guthrie, Moore, Sobonya, Hunt, Longstreth,
L. Phillips, Marshall, Manchin and Wells)**

[Amended and again passed, as a result of the objections of the Governor,
April 17, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 1, 2013.]

AN ACT to amend and reenact §61-2-17 of the Code of West Virginia, 1931, as amended, relating to human trafficking; modifying definitions of human trafficking and sex trafficking of adults; authorizing civil cause of action and attorney fees for victims of human trafficking; specifying that a victim of human trafficking is a victim under the West Virginia Crime Victims Compensation Act; and providing a procedure for expunging certain prostitution convictions.

Be it enacted by the Legislature of West Virginia:

That §61-2-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.**§61-2-17. Human trafficking; criminal penalties.**

1 (a) As used in this section:

2 (1) "Debt bondage" means the status or condition of a debtor
3 arising from a pledge by the debtor of the debtor's personal
4 services or those of a person under the debtor's control as a
5 security for debt, if the value of those services as reasonably
6 assessed is not applied toward the liquidation of the debt or the
7 length and nature of those services are not respectively limited
8 and defined.

9 (2) "Forced labor or services" means labor or services that
10 are performed or provided by another person and are obtained or
11 maintained through a person's:

12 (A) Threat, either implicit or explicit, deception or fraud,
13 scheme, plan, or pattern, or other action intended to cause a
14 person to believe that, if the person did not perform or provide
15 the labor or services that person or another person would suffer
16 serious bodily harm or physical restraint: *Provided*, That, this
17 does not include work or services provided by a minor to the
18 minor's parent or legal guardian so long as the legal
19 guardianship or custody of the minor was not obtained for the
20 purpose compelling the minor to participate in commercial sex
21 acts or sexually explicit performance, or perform forced labor or
22 services.

23 (B) Physically restraining or threatening to physically
24 restrain a person;

25 (C) Abuse or threatened abuse of the legal process; or

26 (D) Knowingly destroying, concealing, removing,
27 confiscating, or possessing any actual or purported passport or

28 other immigration document, or any other actual or purported
29 government identification document, of another person.

30 “Forced labor or services” does not mean labor or services
31 required to be performed by a person in compliance with a court
32 order or as a required condition of probation, parole, or
33 imprisonment.

34 (3) “Human trafficking” means the labor trafficking or sex
35 trafficking involving adults or minors where two or more
36 persons are trafficked within any one year period.

37 (4) “Labor trafficking” means the promotion, recruitment,
38 transportation, transfer, harboring, enticement, provision,
39 obtaining or receipt of a person by any means, whether a United
40 States citizen or foreign national, for the purpose of:

41 (A) Debt bondage or forced labor or services; or

42 (B) Slavery or practices similar to slavery.

43 (5) “Sex trafficking of minors” means the promotion,
44 recruitment, transportation, transfer, harboring, enticement,
45 provision, obtaining or receipt of a person under the age of
46 eighteen by any means, whether a United States citizen or
47 foreign national, for the purpose of causing the minor to engage
48 in sexual acts, or in sexual conduct violating the provisions of
49 subsection (b), section five, article eight of this chapter or article
50 eight-c of this chapter.

51 (6) “Sex trafficking of adults” means the promotion,
52 recruitment, transportation, transfer, harboring, enticement,
53 provision, obtaining, receipt of a person eighteen years of age or
54 older, whether a United States citizen or foreign national for the
55 purposes of engaging in violations of subsection (b), section five,
56 article eight of this chapter by means of force, threat, coercion,
57 deception, abuse or threatened abuse of the legal process, or any

58 scheme, plan, pattern, or other action intended to cause a person
59 to believe that, if the person did not engage in a violation of
60 subsection (b), section five, article eight of this chapter, that
61 person or another person would suffer serious bodily harm or
62 physical restraint.

63 (b) Any person who knowingly and wilfully engages in
64 human trafficking is guilty of a felony and upon conviction shall
65 be incarcerated in a state correctional facility for an
66 indeterminate sentence of not less than three nor more than
67 fifteen years or fined not more than \$200,000, or both.

68 (c) Any person who is a victim of human trafficking may
69 bring a civil action in circuit court. The court may award actual
70 damages, compensatory damages, punitive damages, injunctive
71 relief and any other appropriate relief. A prevailing plaintiff is
72 also entitled to attorneys fees and costs. Treble damages shall be
73 awarded on proof of actual damages where defendant's acts were
74 willful and malicious.

75 (d) Notwithstanding the definition of victim in subsection
76 (k), section three, article two-a, chapter fourteen of this code, a
77 person who is a victim of human trafficking is a victim for all
78 purposes of article two-a, chapter fourteen of this code.

79 (e) This article and the rights and remedies provided in this
80 article are cumulative and in addition to other existing rights.

81 (f) Notwithstanding the age and criminal history limitations
82 set forth in section twenty-six, article eleven of this chapter, any
83 person convicted of prostitution in violation of subsection (b),
84 section five, article eight of this chapter where the conviction
85 was a result of the person being a victim of human trafficking as
86 defined in this section, may petition the circuit court of the
87 county of conviction for an order of expungement pursuant to
88 section twenty-six, article eleven of this chapter.

89 No victim of human trafficking seeking relief under this
 90 subsection shall be required to prove he or she has rehabilitated
 91 himself or herself in order to obtain expungement.

CHAPTER 102

(Com. Sub. for S. B. 414 - Senators Laird and Miller)

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §20-2-32 of the Code of West Virginia, 1931, as amended, relating to issuing hunting and fishing licenses; and modifying who may be a license-issuing authority.

Be it enacted by the Legislature of West Virginia:

That §20-2-32 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-32. Issuance of licenses; duplicate licenses.

1 (a) The clerk of the county commission in each county
 2 requesting designation and other persons, designated by the
 3 director pursuant to section thirty-three of this article, are
 4 license-issuing authorities authorized to issue a license to an
 5 applicant if the applicant is legally entitled to obtain the license
 6 and pays the proper fee.

7 (b) Materials and supplies for the issuance of licenses shall
 8 be furnished by the director to each license-issuing authority as
 9 needed.

10 (c) Each license shall bear a serial number and shall be
11 signed by the licensee. The license-issuing authority shall keep
12 an accurate record of licenses issued and fees collected as
13 prescribed by the director.

14 (d) Any license-issuing authority may issue a duplicate
15 license to replace a lost, destroyed or damaged license upon
16 receipt of a verified application executed by the original licensee
17 and payment of a duplicate license fee of \$1.

CHAPTER 103

**(Com. Sub. for H. B. 2395 - By Delegates Williams,
D. Campbell, Moye, Perdue, Pino and Ellington)**

[Passed April 10, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 17, 2013.]

AN ACT to amend and reenact §16-5P-15 of the Code of West Virginia, 1931, as amended, relating to senior services in-home care registry; providing for sixty-day waiver of initial registration fee; clarifying rule-making authority for the Bureau of Senior Services to require an applicant to obtain a state or federal criminal background check; and requiring legislative rules to be proposed for legislative approval during the 2014 legislative session.

Be it enacted by the Legislature of West Virginia:

That §16-5P-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5P. SENIOR SERVICES.

§16-5P-15. Establishment of In-home Care Registry.

1 (a) There is continued within the Bureau of Senior Services
2 an in-home care worker registry which is to be maintained by the
3 bureau. The purpose of the registry is to provide the public a list
4 of in-home care workers, along with their qualifications, who
5 voluntarily agree to be included and who have obtained a
6 criminal background check.

7 (b) "In-home care worker" means an unlicensed person who
8 provides personal care or other services and supports to persons
9 with disabilities or to the elderly in order to enhance their
10 well-being and which involves face-to-face direct contact with
11 the person. Functions performed may include, but are not limited
12 to, assistance and training in activities of daily living, personal
13 care services, and job-related supports.

14 (c) The bureau shall propose rules for legislative approval
15 during the 2014 legislative session in accordance with the
16 provisions of article three, chapter twenty-nine-a of this code to
17 establish the following:

18 (1) The registry of in-home care workers;

19 (2) The requirements for inclusion on the registry as an
20 "in-home care worker", including educational attainment;

21 (3) A fee schedule: *Provided*, That the Commissioner of the
22 Bureau of Senior Services shall waive the initial registration fee
23 for the first sixty days the registration is active;

24 (4) Requiring an applicant to obtain a state or federal
25 criminal background check, as determined in legislative rule by
26 the bureau;

27 (5) How a person obtains information from the registry; and

28 (6) Any other requirement necessary to implement the
29 provisions of this section.

CHAPTER 104

**(Com. Sub. for S. B. 22 - By Senators Stollings,
Jenkins, Kessler (Mr. President), Miller and Beach)**

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact §5-16-7 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-15-4k; to amend said code by adding thereto a new section, designated §33-16-3w; to amend said code by adding thereto a new section, designated §33-24-7i; to amend said code by adding thereto a new section, designated §33-25-8i; and to amend said code by adding thereto a new section, designated §33-25A-8k, all relating generally to requiring health insurance coverage of maternity services in certain circumstances; providing maternity services for all individuals participating in or receiving insurance coverage under a health insurance policy or plan if those services are covered under the policy or plan; modifying required benefits for public employees insurance, accident and sickness insurance, group accident and sickness insurance, hospital medical and dental corporations, health care corporations and health maintenance organizations; and providing exceptions to the extent that required benefits exceed the essential health benefits specified under the Patient Protection and Affordable Care Act.

Be it enacted by the Legislature of West Virginia:

That §5-16-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §33-15-4k; that said code be amended by adding thereto a new section, designated §33-16-3w; that said code be

amended by adding thereto a new section, designated §33-24-7i; that said code be amended by adding thereto a new section, designated §33-25-8i; and that said code be amended by adding thereto a new section, designated §33-25A-8k, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

1 (a) The agency shall establish a group hospital and surgical
2 insurance plan or plans, a group prescription drug insurance plan
3 or plans, a group major medical insurance plan or plans and a
4 group life and accidental death insurance plan or plans for those
5 employees herein made eligible and establish and promulgate
6 rules for the administration of these plans subject to the
7 limitations contained in this article. These plans shall include:

8 (1) Coverages and benefits for x-ray and laboratory services
9 in connection with mammograms when medically appropriate
10 and consistent with current guidelines from the United States
11 Preventive Services Task Force; pap smears, either conventional
12 or liquid-based cytology, whichever is medically appropriate,
13 and consistent with the current guidelines from either the United

14 States Preventive Services Task Force or The American College
15 of Obstetricians and Gynecologists; and a test for the human
16 papilloma virus (HPV) when medically appropriate and
17 consistent with current guidelines from either the United States
18 Preventive Services Task Force or The American College of
19 Obstetricians and Gynecologists, when performed for cancer
20 screening or diagnostic services on a woman age eighteen or
21 over;

22 (2) Annual checkups for prostate cancer in men age fifty and
23 over;

24 (3) Annual screening for kidney disease as determined to be
25 medically necessary by a physician using any combination of
26 blood pressure testing, urine albumin or urine protein testing and
27 serum creatinine testing as recommended by the National
28 Kidney Foundation;

29 (4) For plans that include maternity benefits, coverage for
30 inpatient care in a duly licensed health care facility for a mother
31 and her newly born infant for the length of time which the
32 attending physician considers medically necessary for the mother
33 or her newly born child. No plan may deny payment for a mother
34 or her newborn child prior to forty-eight hours following a
35 vaginal delivery or prior to ninety-six hours following a
36 caesarean section delivery if the attending physician considers
37 discharge medically inappropriate;

38 (5) For plans which provide coverages for post-delivery care
39 to a mother and her newly born child in the home, coverage for
40 inpatient care following childbirth as provided in subdivision (4)
41 of this subsection if inpatient care is determined to be medically
42 necessary by the attending physician. These plans may include,
43 among other things, medicines, medical equipment, prosthetic
44 appliances and any other inpatient and outpatient services and
45 expenses considered appropriate and desirable by the agency;
46 and

47 (6) Coverage for treatment of serious mental illness:

48 (A) The coverage does not include custodial care, residential
49 care or schooling. For purposes of this section, "serious mental
50 illness" means an illness included in the American Psychiatric
51 Association's diagnostic and statistical manual of mental
52 disorders, as periodically revised, under the diagnostic categories
53 or subclassifications of: (i) Schizophrenia and other psychotic
54 disorders; (ii) bipolar disorders; (iii) depressive disorders; (iv)
55 substance-related disorders with the exception of caffeine-related
56 disorders and nicotine-related disorders; (v) anxiety disorders;
57 and (vi) anorexia and bulimia. With regard to a covered
58 individual who has not yet attained the age of nineteen years,
59 "serious mental illness" also includes attention deficit
60 hyperactivity disorder, separation anxiety disorder and conduct
61 disorder.

62 (B) Notwithstanding any other provision in this section to
63 the contrary, if the agency demonstrates that its total costs for the
64 treatment of mental illness for any plan exceeds two percent of
65 the total costs for such plan in any experience period, then the
66 agency may apply whatever additional cost-containment
67 measures may be necessary in order to maintain costs below two
68 percent of the total costs for the plan for the next experience
69 period. These measures may include, but are not limited to,
70 limitations on inpatient and outpatient benefits.

71 (C) The agency shall not discriminate between medical-
72 surgical benefits and mental health benefits in the administration
73 of its plan. With regard to both medical-surgical and mental
74 health benefits, it may make determinations of medical necessity
75 and appropriateness and it may use recognized health care
76 quality and cost management tools including, but not limited to,
77 limitations on inpatient and outpatient benefits, utilization
78 review, implementation of cost-containment measures,
79 preauthorization for certain treatments, setting coverage levels,
80 setting maximum number of visits within certain time periods,

81 using capitated benefit arrangements, using fee-for-service
82 arrangements, using third-party administrators, using provider
83 networks and using patient cost sharing in the form of
84 copayments, deductibles and coinsurance.

85 (7) Coverage for general anesthesia for dental procedures
86 and associated outpatient hospital or ambulatory facility charges
87 provided by appropriately licensed health care individuals in
88 conjunction with dental care if the covered person is:

89 (A) Seven years of age or younger or is developmentally
90 disabled and is an individual for whom a successful result cannot
91 be expected from dental care provided under local anesthesia
92 because of a physical, intellectual or other medically
93 compromising condition of the individual and for whom a
94 superior result can be expected from dental care provided under
95 general anesthesia;

96 (B) A child who is twelve years of age or younger with
97 documented phobias or with documented mental illness and with
98 dental needs of such magnitude that treatment should not be
99 delayed or deferred and for whom lack of treatment can be
100 expected to result in infection, loss of teeth or other increased
101 oral or dental morbidity and for whom a successful result cannot
102 be expected from dental care provided under local anesthesia
103 because of such condition and for whom a superior result can be
104 expected from dental care provided under general anesthesia.

105 (8) (A) Any plan issued or renewed on or after January 1,
106 2012, shall include coverage for diagnosis, evaluation and
107 treatment of autism spectrum disorder in individuals ages
108 eighteen months to eighteen years. To be eligible for coverage
109 and benefits under this subdivision, the individual must be
110 diagnosed with autism spectrum disorder at age eight or
111 younger. Such plan shall provide coverage for treatments that are
112 medically necessary and ordered or prescribed by a licensed
113 physician or licensed psychologist and in accordance with a

114 treatment plan developed from a comprehensive evaluation by
115 a certified behavior analyst for an individual diagnosed with
116 autism spectrum disorder.

117 (B) The coverage shall include, but not be limited to, applied
118 behavior analysis which shall be provided or supervised by a
119 certified behavior analyst. The annual maximum benefit for
120 applied behavior analysis required by this subdivision shall be in
121 an amount not to exceed \$30,000 per individual for three
122 consecutive years from the date treatment commences. At the
123 conclusion of the third year, coverage for applied behavior
124 analysis required by this subdivision shall be in an amount not
125 to exceed \$2,000 per month, until the individual reaches eighteen
126 years of age, as long as the treatment is medically necessary and
127 in accordance with a treatment plan developed by a certified
128 behavior analyst pursuant to a comprehensive evaluation or
129 reevaluation of the individual. This subdivision does not limit,
130 replace or affect any obligation to provide services to an
131 individual under the Individuals with Disabilities Education Act,
132 20 U. S. C. 1400 et seq., as amended from time to time or other
133 publicly funded programs. Nothing in this subdivision requires
134 reimbursement for services provided by public school personnel.

135 (C) The certified behavior analyst shall file progress reports
136 with the agency semiannually. In order for treatment to continue,
137 the agency must receive objective evidence or a clinically
138 supportable statement of expectation that:

139 (i) The individual's condition is improving in response to
140 treatment;

141 (ii) A maximum improvement is yet to be attained; and

142 (iii) There is an expectation that the anticipated improvement
143 is attainable in a reasonable and generally predictable period of
144 time.

145 (D) On or before January 1 each year, the agency shall file
146 an annual report with the Joint Committee on Government and

147 Finance describing its implementation of the coverage provided
148 pursuant to this subdivision. The report shall include, but not be
149 limited to, the number of individuals in the plan utilizing the
150 coverage required by this subdivision, the fiscal and
151 administrative impact of the implementation and any
152 recommendations the agency may have as to changes in law or
153 policy related to the coverage provided under this subdivision.
154 In addition, the agency shall provide such other information as
155 required by the Joint Committee on Government and Finance as
156 it may request.

157 (E) For purposes of this subdivision, the term:

158 (i) "Applied behavior analysis" means the design,
159 implementation and evaluation of environmental modifications
160 using behavioral stimuli and consequences in order to produce
161 socially significant improvement in human behavior and
162 includes the use of direct observation, measurement and
163 functional analysis of the relationship between environment and
164 behavior.

165 (ii) "Autism spectrum disorder" means any pervasive
166 developmental disorder including autistic disorder, Asperger's
167 Syndrome, Rett Syndrome, childhood disintegrative disorder or
168 Pervasive Development Disorder as defined in the most recent
169 edition of the Diagnostic and Statistical Manual of Mental
170 Disorders of the American Psychiatric Association.

171 (iii) "Certified behavior analyst" means an individual who
172 is certified by the Behavior Analyst Certification Board or
173 certified by a similar nationally recognized organization.

174 (iv) "Objective evidence" means standardized patient
175 assessment instruments, outcome measurements tools or
176 measurable assessments of functional outcome. Use of objective
177 measures at the beginning of treatment, during and after

178 treatment is recommended to quantify progress and support
179 justifications for continued treatment. The tools are not required
180 but their use will enhance the justification for continued
181 treatment.

182 (F) To the extent that the application of this subdivision for
183 autism spectrum disorder causes an increase of at least one
184 percent of actual total costs of coverage for the plan year, the
185 agency may apply additional cost containment measures.

186 (G) To the extent that the provisions of this subdivision
187 require benefits that exceed the essential health benefits
188 specified under section 1302(b) of the Patient Protection and
189 Affordable Care Act, Pub. L. No. 111-148, as amended, the
190 specific benefits that exceed the specified essential health
191 benefits shall not be required of insurance plans offered by the
192 Public Employees Insurance Agency.

193 (9) For plans that include maternity benefits, coverage for
194 the same maternity benefits for all individuals participating in or
195 receiving coverage under plans that are issued or renewed on or
196 after January 1, 2014: *Provided*, That to the extent that the
197 provisions of this subdivision require benefits that exceed the
198 essential health benefits specified under section 1302(b) of the
199 Patient Protection and Affordable Care Act, Pub. L. No. 111-
200 148, as amended, the specific benefits that exceed the specified
201 essential health benefits shall not be required of a health benefit
202 plan when the plan is offered in this state.

203 (b) The agency shall, with full authorization, make available
204 to each eligible employee, at full cost to the employee, the
205 opportunity to purchase optional group life and accidental death
206 insurance as established under the rules of the agency. In
207 addition, each employee is entitled to have his or her spouse and
208 dependents, as defined by the rules of the agency, included in the
209 optional coverage, at full cost to the employee, for each eligible
210 dependent.

211 (c) The finance board may cause to be separately rated for
212 claims experience purposes:

213 (1) All employees of the State of West Virginia;

214 (2) All teaching and professional employees of state public
215 institutions of higher education and county boards of education;

216 (3) All nonteaching employees of the Higher Education
217 Policy Commission, West Virginia Council for Community and
218 Technical College Education and county boards of education; or

219 (4) Any other categorization which would ensure the
220 stability of the overall program.

221 (d) The agency shall maintain the medical and prescription
222 drug coverage for Medicare eligible retirees by providing
223 coverage through one of the existing plans or by enrolling the
224 Medicare eligible retired employees into a Medicare specific
225 plan, including, but not limited to, the Medicare/Advantage
226 Prescription Drug Plan. If a Medicare specific plan is no longer
227 available or advantageous for the agency and the retirees, the
228 retirees remain eligible for coverage through the agency.

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4k. Maternity coverage.

1 Notwithstanding any provision of any policy, provision,
2 contract, plan or agreement applicable to this article, any health
3 insurance policy subject to this article, issued or renewed on or
4 after January 1, 2014, which provides health insurance coverage
5 for maternity services, shall provide coverage for maternity
6 services for all persons participating in or receiving coverage
7 under the policy. To the extent that the provisions of this section
8 require benefits that exceed the essential health benefits

9 specified under section 1302(b) of the Patient Protection and
10 Affordable Care Act, Pub. L. No. 111-148, as amended, the
11 specific benefits that exceed the specified essential health
12 benefits are not required of a health benefit plan when the plan
13 is offered by a health care insurer in this state. Coverage required
14 under this section may not be subject to exclusions or limitations
15 which are not applied to other maternity coverage under the
16 policy.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3w. Maternity coverage.

1 Notwithstanding any provision of any policy, provision,
2 contract, plan or agreement applicable to this article, any health
3 insurance policy subject to this article, issued or renewed on or
4 after January 1, 2014, which provides health insurance coverage
5 for maternity services, shall provide coverage for maternity
6 services for all persons participating in, or receiving coverage
7 under the policy. To the extent that the provisions of this section
8 require benefits that exceed the essential health benefits
9 specified under section 1302(b) of the Patient Protection and
10 Affordable Care Act, Pub. L. No. 111-148, as amended, the
11 specific benefits that exceed the specified essential health
12 benefits are not required of a health benefit plan when the plan
13 is offered by a health care insurer in this state. Coverage required
14 under this section may not be subject to exclusions or limitations
15 which are not applied to other maternity coverage under the
16 policy.

ARTICLE 24. HOSPITAL MEDICAL AND DENTAL CORPORATIONS.

§33-24-7l. Maternity coverage.

1 Notwithstanding any provision of any policy, provision,
2 contract, plan or agreement applicable to this article, a health

3 insurance policy subject to this article, issued or renewed on or
4 after January 1, 2014, which provides health insurance coverage
5 for maternity services, shall provide coverage for maternity
6 services for all persons participating in, or receiving coverage
7 under the policy. To the extent that the provisions of this section
8 require benefits that exceed the essential health benefits
9 specified under section 1302(b) of the Patient Protection and
10 Affordable Care Act, Pub. L. No. 111-148, as amended, the
11 specific benefits that exceed the specified essential health
12 benefits are not required of a health benefit plan when the plan
13 is offered by a health care insurer in this state. Coverage required
14 under this section may not be subject to exclusions or limitations
15 which are not applied to other maternity coverage under the
16 policy.

ARTICLE 25. HEALTH CARE CORPORATION.

§33-25-8i. Maternity coverage.

1 Notwithstanding any provision of any policy, provision,
2 contract, plan or agreement applicable to this article, a health
3 insurance policy subject to this article, issued or renewed on or
4 after January 1, 2014, which provides health insurance coverage
5 for maternity services, shall provide coverage for maternity
6 services for all persons participating in, or receiving coverage
7 under the policy. To the extent that the provisions of this section
8 require benefits that exceed the essential health benefits
9 specified under section 1302(b) of the Patient Protection and
10 Affordable Care Act, Pub. L. No. 111-148, as amended, the
11 specific benefits that exceed the specified essential health
12 benefits are not required of a health benefit plan when the plan
13 is offered by a health care insurer in this state. Coverage required
14 under this section may not be subject to exclusions or limitations
15 which are not applied to other maternity coverage under the
16 policy.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION
ACT.****§33-25A-8k. Maternity coverage.**

1 Notwithstanding any provision of any policy, provision,
2 contract, plan or agreement applicable to this article, a health
3 insurance policy subject to this article, issued or renewed on or
4 after January 1, 2014, which provides health insurance coverage
5 for maternity services, shall provide coverage for maternity
6 services for all persons participating in, or receiving coverage
7 under the policy. To the extent that the provisions of this section
8 require benefits that exceed the essential health benefits
9 specified under section 1302(b) of the Patient Protection and
10 Affordable Care Act, Pub. L. No. 111-148, as amended, the
11 specific benefits that exceed the specified essential health
12 benefits are not required of a health benefit plan when the plan
13 is offered by a health care insurer in this state. Coverage required
14 under this section may not be subject to exclusions or limitations
15 which are not applied to other maternity coverage under the
16 policy.

CHAPTER 105**(Com. Sub. for S. B. 534 - By Senator Palumbo)**

[Passed April 11, 2013; in effect from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §33-6F-2 of the Code of West Virginia,
1931, as amended, relating to correcting an internal reference of
the code with regard to insurance information disclosure.

Be it enacted by the Legislature of West Virginia:

That §33-6F-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6F. DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION.

§33-6F-2. Disclosure of certain insurance information required.

1 Notwithstanding the provisions of section one of this article:

2 (a) Each insurer that provides personal lines liability
3 insurance coverage, as that term is defined in section nine, article
4 twelve of this chapter, to pay all or a portion of a claim asserted
5 against an insurance policy insuring a motor vehicle shall
6 provide, within thirty days of its receipt of a written request from
7 a claimant's attorney who has given written notice that he or she
8 represents the claimant:

9 (1) A response providing the following information relating
10 to each of the insurer's known policies of insurance, including
11 excess or umbrella insurance, which does or may provide
12 liability coverage for the claim:

13 (A) The name of the insurer;

14 (B) The name of each named insured of the subject policy;
15 and

16 (C) The limits of any motor vehicle liability insurance policy
17 at the time of the events that are the subject of the claim; or

18 (2) The declarations page of any motor vehicle liability
19 policy applicable at the time of the events that are the subject of
20 the claim, appropriately redacted to comply with applicable
21 privacy laws or rules;

22 (b) Any written request by the claimant's attorney under this
23 section must include:

24 (1) The date and location of the events that are the subject of
25 the claim;

26 (2) The name and, if known, the last known address of the
27 insured;

28 (3) A copy of the accident or incident report, if any;

29 (4) The insurer's claim number;

30 (5) A good-faith estimate and documentation of all of the
31 claimant's medical expenses if any and any wage loss
32 documentation as of the date of the request, if any; and

33 (6) Documentation as of the date of the request of any and
34 all property damage.

35 (c) Disclosure of the information required by subsection (a)
36 of this section is not an admission that the alleged injury or
37 damage is subject to the policy, nor does the disclosure waive
38 any reservation of rights an insurer may have.

39 (d) The information disclosed by any party pursuant to this
40 section, by reason of the disclosure, is not admissible as
41 evidence at trial.

42 (e) An insurer's compliance with this section does not
43 constitute a violation of this article, or subsection (12), section
44 four, article eleven of this chapter.

45 (f) An insurer that fails to comply with this section is subject
46 to a penalty of \$500, plus reasonable attorneys' fees and
47 expenses incurred in obtaining disclosure of the information
48 required by subsection (a) of this section. This penalty is the sole

49 and exclusive remedy for an insurer's failure to comply with this
50 section.

CHAPTER 106

(Com. Sub. for H. B. 2762 - By Delegates Miley and Manchin)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §33-12B-1 and §33-12B-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-12B-4a, all relating to insurance; licensure of insurance adjusters; definitions, including a definition of “automated claims adjudication system”; providing exemptions for certain individuals from adjuster licensure in this state; and providing that a resident of Canada may be licensed as a nonresident adjuster if that person has obtained a resident or home state adjuster license in another state.

Be it enacted by the Legislature of West Virginia:

That §33-12B-1 and §33-12B-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-12B-4a, all to read as follows:

ARTICLE 12B. ADJUSTERS.

§33-12B-1. Definitions.

1 (a) An “adjuster” is any individual who, for compensation,
2 fee or commission, investigates and settles claims arising under

3 property, casualty or surety insurance contracts, on behalf solely
4 of either the insurer or insured. A licensed attorney who is
5 qualified to practice law in this state is deemed not to be an
6 adjuster for the purposes of this article.

7 (b) "Automated claims adjudication system" means a
8 preprogrammed computer system designed for the collection,
9 data entry, calculation and final resolution of portable electronics
10 insurance claims which:

11 (1) May only be used by a licensed adjuster, licensed
12 producer or supervised individuals operating pursuant to section
13 four-a of this article;

14 (2) Must comply with all claims payments requirements of
15 the insurance code; and

16 (3) Must be certified as compliant with this section by a
17 licensed adjuster that is an officer of the entity which employs
18 the individuals operating pursuant to section four-a of this
19 article.

20 (c) "Company adjuster" means an adjuster representing the
21 interests of the insurer, including an independent contractor and
22 a salaried employee of the insurer.

23 (d) "Home state" means the District of Columbia or any state
24 or territory of the United States in which an adjuster maintains
25 his or her principal place of residence or business and in which
26 he or she is licensed to act as a resident adjuster. If a person's
27 principal place of residence or business does not license
28 adjusters for the type of adjuster license sought in this state, he
29 or she shall designate as his or her home state any state in which
30 he or she has such a license.

31 (e) "Public adjuster" means an independent contractor
32 representing solely the financial interests of the insured named
33 in the policy.

34 (f) "Crop adjuster" means a person who adjusts crop
35 insurance claims under the federal crop insurance program
36 administered by the United States Department of Agriculture.

§33-12B-4a. Exemptions from license.

1 Individuals who collect claim information from, or furnish
2 claim information to, insureds or claimants and who conduct
3 data entry including entering data into an automated claims
4 adjudication system are exempt from licensure under this article:
5 *Provided, That* the individuals are under the supervision of a
6 licensed adjuster or licensed producer: *Provided however, That*
7 no more than twenty-five persons are under the supervision of
8 one licensed adjuster or licensed producer.

§33-12B-9. Licensing of nonresident adjusters.

1 (a) A nonresident applicant for an adjuster license who holds
2 a similar license in his or her home state may be licensed as a
3 nonresident adjuster in this state if the applicant's home state has
4 established, by law or regulation like requirements for the
5 licensing of a resident of this state as a nonresident adjuster.

6 (b) As a condition of continuing a nonresident adjuster
7 license, the licensee must maintain a license in his or her home
8 state.

9 (c) If a nonresident adjuster desires to become a resident
10 adjuster he or she must apply to become one within ninety days
11 of establishing legal residency in this state.

12 (d) If a nonresident adjuster has his or her license suspended,
13 terminated or revoked by his or her home state, the adjuster must
14 immediately notify the commissioner of that action.

15 (e) A resident of Canada may be licensed as a nonresident
16 adjuster under this section if that person has obtained a resident
17 or home state adjuster license in another state.

CHAPTER 107

**(Com. Sub. for H. B. 2960 - By Delegates Guthrie,
Hartman and Manchin)**

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 1, 2013.]

AN ACT to repeal §33-25C-5, §33-25C-6, §33-25C-7, §33-25C-9 and §33-25C-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §33-16H-1, §33-16H-2, §33-16H-3 and §33-16H-4, all relating to requiring health plan issuers to develop processes for utilization review, to develop internal grievance procedures, and to make external review available with respect to all adverse determinations; mandating utilization review and internal grievance procedures; providing for external review of adverse determinations; defining terms; providing for judicial review of certain decisions; providing for venue of judicial review; providing for continued benefits pending judicial review; providing for an award of attorneys fees; providing no new causes of action; preserving existing causes of action; repealing similar provisions applicable to only health maintenance organizations; and directing proposal of legislative rules.

Be it enacted by the Legislature of West Virginia:

That §33-25C-5, §33-25C-6, §33-25C-7, §33-25C-9 and §33-25C-11 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new article, designated §33-16H-1, §33-16H-2, §33-16H-3 and §33-16H-4, all to read as follows:

ARTICLE 16H. REVIEW OF ADVERSE DETERMINATIONS.**§33-16H-1. Definitions.**

1 As used in this article:

2 (1) "Adverse determination" means a determination by a
3 health carrier or its designee utilization review organization that
4 an admission, availability of care, continued stay or other
5 healthcare service that is a covered benefit has been reviewed
6 and, based upon the information provided, does not meet the
7 health carrier's requirements for medical necessity,
8 appropriateness, health care setting, level of care or
9 effectiveness, and the requested service or payment for the
10 service is therefore denied, reduced or terminated.

11 (2) "External review" means a review of a final adverse
12 determination by an independent review organization.

13 (3) "Final adverse determination" means an adverse
14 determination that has been upheld by the issuer at the
15 completion of the internal grievance procedures or an adverse
16 determination with respect to which the internal grievance
17 procedures have been deemed exhausted.

18 (4) "Health benefit plan" means a policy, contract, certificate
19 or agreement entered into, offered or issued by an issuer to
20 provide, deliver, arrange for, pay for, or reimburse any of the
21 costs of health care services, including short-term and
22 catastrophic health insurance policies and policies that pay on a
23 cost-incurred basis, but excludes the excepted benefits defined
24 in 42 U. S. C. §300gg-91 and policies, contracts, certificates or
25 agreements excluded by rules promulgated pursuant to section
26 four of this article.

27 (5) "Health plan issuer" or "issuer" means an entity required
28 to be licensed under this chapter that contracts, or offers to

29 contract to provide, deliver, arrange for, pay for, or reimburse
30 any of the costs of health care services under a health benefit
31 plan, including an accident and sickness insurance company, a
32 health maintenance corporation, a health care corporation, a
33 health or hospital service corporation, and a fraternal benefit
34 society.

35 (6) "Independent review organization" means an entity
36 approved by the commissioner to conduct external reviews of
37 final adverse determinations.

38 (7) "Utilization review" means a system for the evaluation
39 of the necessity, appropriateness and efficiency of the use of
40 health care services, procedure and facilities.

§33-16H-2. Issuer requirements.

1 An issuer shall, in accordance with rules promulgated
2 pursuant to section four of this article, develop processes for
3 utilization review and internal grievance procedures and shall
4 make external review available with respect to all adverse
5 determinations.

§33-16H-3. Judicial review; enforcement.

1 (a) An individual or issuer may seek judicial review of a
2 final decision rendered by an independent review organization
3 by filing a petition in the circuit court within sixty days after
4 receipt of notice of such decision.

5 (1) Venue for a petition filed pursuant to this section is the
6 county in which the individual resides or, if the individual is a
7 non-resident, the county in which he or she works or, if he or she
8 does not work in this state, the county in which his or her
9 employer is located, or if none of these counties are applicable,
10 in Kanawha County.

11 (2) The issuer shall provide benefits pursuant to the final
12 external review decision, including by making payment on a
13 disputed claim, unless or until there is a judicial decision
14 otherwise.

15 (3) If the issuer files a petition pursuant to this section and
16 the individual substantially prevails, the issuer shall be
17 responsible for the reasonable attorney's fees of the individual.

18 (b) A decision issued by an independent review organization
19 pursuant to this article may be enforced in the same manner as
20 an order of the commissioner.

21 (c) This article does not create any new cause of action or
22 eliminate any presently existing cause of action.

§33-16H-4. Rule-making authority; applicability.

1 (a) The commissioner shall propose legislative rules for
2 approval by the Legislature in accordance with the provisions of
3 article three, chapter twenty-nine-a of this code to implement the
4 provisions of this article, including, but not limited to, rules to:

5 (1) Define the scope of the applicability of this article;

6 (2) Establish requirements for all issuers with regard to
7 utilization review and for internal grievance procedures and
8 external review of adverse determinations, which rules shall be
9 based on the corresponding model acts adopted by the National
10 Association of Insurance Commissioners and, with respect to
11 external review, shall meet or exceed the minimum consumer
12 protections established by the federal Patient Protection and
13 Affordable Care Act (Public Law 111-148), as amended by the
14 federal Health Care and Education Reconciliation Act of 2010
15 (Public Law 111-152); and

16 (3) Provide for judicial review pursuant to subsection (a),
17 section three of this article, which rules shall be based on the

18 provisions of this code and rules governing judicial review of
19 contested cases under the State Administrative Procedures Act.

20 (b) Notwithstanding the provisions of section one, article
21 twenty-three of this chapter; section four, article twenty-four of
22 this chapter; section six, article twenty-five of this chapter; and
23 section twenty-four, article twenty-five-a of this chapter, this
24 article and the rules promulgated under this article are applicable
25 to all health benefits plans and supersede any provisions to the
26 contrary in this chapter or in any rules promulgated under this
27 chapter.

CHAPTER 108

**(Com. Sub. for H. B. 2819 - By Delegates Guthrie,
Hartman, Ashley and Walters)**

[Passed April 12, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §33-31-16a of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-40-3 of said code, all relating to the financial oversight of entities regulated by the Insurance Commissioner; requiring captive insurance companies organized as risk retention groups to comply with risk-based capital for insurers' provisions and state rules; and incorporating a solvency trend test for property and casualty insurance companies.

Be it enacted by the Legislature of West Virginia:

That §33-31-16a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §33-40-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 31. CAPTIVE INSURANCE.**§33-31-16a. Laws applicable; Risk Retention Groups.**

1 In addition to the applicable provisions of this article, any
2 captive insurance company organized as a risk retention group
3 is subject to the following provisions of this chapter: section
4 nine, article two (examination of insurers, agents, brokers and
5 solicitors; access to books, records, etc.); section fourteen, article
6 four (financial statement filings; annual and quarterly
7 statements; required format; foreign insurers; agents of the
8 commissioner); section fifteen-a, article four (credit for
9 reinsurance; definitions; requirements; trust accounts; reductions
10 from liability; security; effective date); article seven (assets and
11 liabilities); article ten (rehabilitation and liquidation); article
12 twenty-seven (insurance holding company systems); article
13 thirty-three (annual audited financial report); article thirty-four
14 (administrative supervision); article thirty-five (criminal
15 sanctions for failure to report impairment); article thirty-six
16 (Business Transacted with Producer Controlled
17 Property/Casualty Insurer Act); article thirty-seven (managing
18 general agents); article thirty-eight (Reinsurance Intermediary
19 Act); article forty (risk-based capital for insurers); and article
20 forty-one (Insurance Fraud Prevention Act), as well as any rules
21 promulgated under those provisions in accordance with article
22 three, chapter twenty-nine-a of this code, including any rule
23 relating to property and casualty actuarial opinions.

ARTICLE 40. RISK-BASED CAPITAL (RBC) FOR INSURERS.**§33-40-3. Company action level event.**

1 (a) "Company action level event" means any of the
2 following events:

3 (1) The filing of an RBC report by an insurer which indicates
4 that:

5 (A) The insurer's total adjusted capital is greater than or
6 equal to its regulatory action level RBC, but less than its
7 company action level RBC;

8 (B) If a life and/or health insurer, the insurer has total
9 adjusted capital which is greater than or equal to its company
10 action level RBC, but less than the product of its authorized
11 control level RBC and two and one-half and has a negative
12 trend; or

13 (C) If a property and casualty insurer, the insurer has total
14 adjusted capital which is greater than or equal to its company
15 action level RBC, but less than the product of its authorized
16 control level RBC and three and triggers the trend test
17 determined in accordance with the trend test calculation included
18 in the property and casualty RBC instructions;

19 (2) The notification by the commissioner to the insurer of an
20 adjusted RBC report that indicates an event in subdivision (1) of
21 this subsection, provided the insurer does not challenge the
22 adjusted RBC report under section seven of this article; or

23 (3) If, pursuant to section seven of this article, an insurer
24 challenges an adjusted RBC report that indicates the event in
25 subdivision (1) of this subsection, the notification by the
26 commissioner to the insurer that the commissioner has, after a
27 hearing, rejected the insurer's challenge.

28 (b) In the event of a company action level event, the insurer
29 shall prepare and submit to the commissioner an RBC plan
30 which shall:

31 (1) Identify the conditions which contribute to the company
32 action level event;

33 (2) Contain proposals of corrective actions which the insurer
34 intends to take and would be expected to result in the elimination
35 of the company action level event;

36 (3) Provide projections of the insurer's financial results in
37 the current year and at least the four succeeding years or, in the
38 case of an HMO, in the current year and at least the two
39 succeeding years, both in the absence of proposed corrective
40 actions and giving effect to the proposed corrective actions,
41 including projections of statutory operating income, net income,
42 capital and/or surplus. (The projections for both new and renewal
43 business may include separate projections for each major line of
44 business and separately identify each significant income,
45 expense and benefit component);

46 (4) Identify the key assumptions impacting the insurer's
47 projections and the sensitivity of the projections to the
48 assumptions; and

49 (5) Identify the quality of, and problems associated with, the
50 insurer's business, including, but not limited to, its assets,
51 anticipated business growth and associated surplus strain,
52 extraordinary exposure to risk, mix of business and use of
53 reinsurance, if any, in each case.

54 (c) The RBC plan shall be submitted:

55 (1) Within forty-five days of the company action level
56 event; or

57 (2) If the insurer challenges an adjusted RBC report pursuant
58 to section seven of this article, within forty-five days after
59 notification to the insurer that the commissioner has, after a
60 hearing, rejected the insurer's challenge.

61 (d) Within sixty days after the submission by an insurer of
62 an RBC plan to the commissioner, the commissioner shall notify
63 the insurer whether the RBC plan may be implemented or is, in
64 the judgment of the commissioner, unsatisfactory. If the
65 commissioner determines the RBC plan is unsatisfactory, the
66 notification to the insurer shall set forth the reasons for the

67 determination and may set forth proposed revisions which will
68 render the RBC plan satisfactory in the judgment of the
69 commissioner. Upon notification from the commissioner, the
70 insurer shall prepare a revised RBC plan, which may incorporate
71 by reference any revisions proposed by the commissioner, and
72 shall submit the revised RBC plan to the commissioner:

73 (1) Within forty-five days after the notification from the
74 commissioner; or

75 (2) If the insurer challenges the notification from the
76 commissioner under section seven of this article, within
77 forty-five days after a notification to the insurer that the
78 commissioner has, after a hearing, rejected the insurer's
79 challenge.

80 (e) In the event of a notification by the commissioner to an
81 insurer that the insurer's RBC plan or revised RBC plan is
82 unsatisfactory, the commissioner may, at the commissioner's
83 discretion, subject to the insurer's right to a hearing under
84 section seven of this article, specify in the notification that the
85 notification constitutes a regulatory action level event.

86 (f) Every domestic insurer that files an RBC plan or revised
87 RBC plan with the commissioner shall file a copy of the RBC
88 plan or revised RBC plan with the Insurance Commissioner in
89 any state in which the insurer is authorized to do business if:

90 (1) The state has an RBC provision substantially similar to
91 subsection (a), section eight of this article; and

92 (2) The Insurance Commissioner of that state has notified
93 the insurer of its request for the filing in writing, in which case
94 the insurer shall file a copy of the RBC plan or revised RBC plan
95 in that state no later than the later of:

96 (A) Fifteen days after the receipt of notice to file a copy of
97 its RBC plan or revised RBC plan with the state; or

- 98 (B) The date on which the RBC plan or revised RBC plan is
99 filed under subsections (c) and (d) of this section.

CHAPTER 109

**(S. B. 403 - By Senators Palumbo, Chafin
and Kessler (Mr. President))**

[Passed April 13, 2013; in effect from passage.]
[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact §51-9-4 of the Code of West Virginia, 1931, as amended, relating to the judicial retirement system; reducing the contribution rate of judges; authorizing the Consolidated Public Retirement Board to annually establish future participant contribution rates based on the State Actuary's report; requiring certain reporting to the Legislature's Joint Committee on Government and Finance and the Joint Committee on Pensions and Retirement; and limiting the participant contribution rate to no more than ten and one-half percent and no less than seven percent of a participant's salary.

Be it enacted by the Legislature of West Virginia:

That §51-9-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF
RECORD.**

§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; leased employees; military

service credit; maximum allowable and qualified military service; qualifiable prosecutorial service.

1 (a) Every person who is now serving or shall hereafter serve
2 as a judge of any court of record of this state shall pay into the
3 Judges' Retirement Fund six percent of the salary received by
4 such person out of the State Treasury: *Provided*, That when a
5 judge becomes eligible to receive benefits from such trust fund
6 by actual retirement, no further payment by him or her shall be
7 required, since such employee contribution, in an equal
8 treatment sense, ceases to be required in the other retirement
9 systems of the state, also, only after actual retirement: *Provided*,
10 *however*. That on and after January 1, 1995, every person who is
11 then serving or shall thereafter serve as a judge of any court of
12 record in this state shall pay into the Judges' Retirement Fund
13 nine percent of the salary received by that person: *Provided*
14 *further*, That consistent with the salary increase granted to
15 judges of courts of record during the 2005 regular legislative
16 session and to changes effectuated in judicial retirement by
17 provisions enacted during the third extraordinary legislative
18 session of 2005, on and after July 1, 2005, every person who is
19 then serving or shall thereafter serve as a judge of any court of
20 record in this state shall pay into the Judges' Retirement Fund
21 ten and one-half percent of the salary received by that person:
22 *And provided further*. That on and after July 1, 2013, except as
23 provided in subsection (b) of this section, every person who is
24 then serving or shall thereafter serve as a judge of any court of
25 record in this state and who elects to participate in this
26 retirement system shall pay into the Judges' Retirement Fund
27 seven percent of the salary received. Any prior occurrence or
28 practice to the contrary, in any way allowing discontinuance of
29 required employee contributions prior to actual retirement under
30 this retirement system, is rejected as erroneous and contrary to
31 legislative intent and as violative of required equal treatment and
32 is hereby nullified and discontinued fully, with the State Auditor
33 to require such contribution in every instance hereafter, except

34 where no contributions are required to be made under any of the
35 provisions of this article.

36 (b) On and after July 1, 2014, every person who is serving or
37 shall hereafter serve as a judge of any court of record of this state
38 and who elects to participate in this retirement system shall
39 contribute to the fund an amount determined by the board. This
40 amount will be based on the annual actuarial valuation prepared
41 by the State Actuary: *Provided*, That the contribution will be no
42 less than seven percent or no more than ten and one-half percent
43 of the participant's annual compensation.

44 (c) On or after July 1, 2013, and each year thereafter, the
45 annual actuarial valuation prepared by the State Actuary for
46 determination of all participants' contributions and the annual
47 actuarially required contribution prepared by the State Actuary
48 for use by the courts of this state for legislative appropriation
49 shall be provided to the Legislature's Joint Committee on
50 Government and Finance and the Joint Committee on Pensions
51 and Retirement.

52 (d) An individual who is a leased employee shall not be
53 eligible to participate in the system. For purposes of this system,
54 a "leased employee" means any individual who performs
55 services as an independent contractor or pursuant to an
56 agreement with an employee leasing organization or other
57 similar organization. If a question arises regarding the status of
58 an individual as a leased employee, the board has the final power
59 to decide the question.

60 (e) In drawing warrants for the salary checks of judges, the
61 State Auditor shall deduct from the amount of each such salary
62 check six percent thereof, which amount so deducted shall be
63 credited by the Consolidated Public Retirement Board to the
64 trust fund: *Provided*, That on or after January 1, 1995, the
65 amount so deducted and credited shall be nine percent of each

66 such salary check: *Provided, however,* That consistent with the
67 salary increase granted to judges of courts of record during the
68 2005 regular legislative session and to changes effectuated in
69 judicial retirement by provisions enacted during the third
70 extraordinary legislative session of 2005, on or after July 1,
71 2005, the amount so deducted and credited shall be ten and
72 one-half percent of each such salary check: *Provided further,*
73 That on and after July 1, 2013, except as provided in subsection
74 (b) of this section, the amount so deducted and credited shall be
75 seven percent of each salary check; *And provided further,* That
76 on and after July 1, 2014, the amount so deducted and credited
77 will be determined by the board.

78 (f) Any judge seeking to qualify military service to be
79 claimed as credited service, in allowable aggregate maximum
80 amount up to five years, shall be entitled to be awarded the same
81 without any required payment in respect thereof to the Judges'
82 Retirement Fund.

83 (g) Notwithstanding the preceding provisions of this section,
84 contributions, benefits and service credit with respect to
85 qualified military service shall be provided in accordance with
86 Section 414(u) of the Internal Revenue Code. For purposes of
87 this section, "qualified military service" has the same meaning
88 as in Section 414(u) of the Internal Revenue Code. The
89 Retirement Board is authorized to determine all questions and
90 make all decisions relating to this section and may promulgate
91 rules relating to contributions, benefits and service credit
92 pursuant to the authority granted to the retirement board in
93 section one, article ten-d, chapter five of this code to comply
94 with Section 414(u) of the Internal Revenue Code.

95 (h) Any judge holding office as such on the effective date of
96 the amendments to this article adopted by the Legislature at its
97 1987 regular session who seeks to qualify service as a
98 prosecuting attorney as credited service, which service credit
99 must have been earned prior to the year 1987, shall be required

100 to pay into the Judges' Retirement Fund nine percent of the
101 annual salary which was actually received by such person as
102 prosecuting attorney during the time such prosecutorial service
103 was rendered prior to the year 1987 and for which credited
104 service is being sought, together with applicable interest. No
105 judge whose term of office shall commence after the effective
106 date of such amendments to this article shall be eligible to claim
107 any credit for service rendered as a prosecuting attorney as
108 eligible service for retirement benefits under this article, nor
109 shall any time served as a prosecutor after the year 1988 be
110 considered as eligible service for any purposes of this article.

CHAPTER 110

(Com. Sub. for S. B. 74 - By Senator Sypolt)

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §52-1-5a and §52-1-8 of the Code of West Virginia, 1931, as amended, all relating to redefining the basis for disqualification of prospective jurors to include those who have been convicted of any crime punishable by imprisonment in excess of one year, perjury or false swearing; and requiring clerks to provide copies of certain juror qualification questionnaires to counsel of record upon request.

Be it enacted by the Legislature of West Virginia:

That §52-1-5a and §52-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. PETIT JURIES.**§52-1-5a. Jury qualification form; contents; procedure for use; penalties.**

1 (a) Not less than twenty days before the date for which
2 persons are to report for jury duty, the clerk may, if directed by
3 the court, serve by first-class mail, upon each person listed on
4 the master list, a juror qualification form accompanied by
5 instructions necessary for its completion: *Provided*, That the
6 clerk may, if directed by the court, mail the juror qualification
7 form to only those prospective jurors drawn for jury service
8 under the provisions of section seven of this article. Each
9 prospective juror shall be directed to complete the form and
10 return it by mail to the clerk within ten days after its receipt. The
11 juror qualification form is subject to approval by the circuit court
12 as to matters of form and shall elicit the following information
13 concerning the prospective juror:

14 (1) The juror's name, sex, race, age and marital status;

15 (2) The juror's level of educational attainment, occupation
16 and place of employment;

17 (3) If married, the name of the juror's spouse and the
18 occupation and place of employment of the spouse;

19 (4) The juror's residence address and the juror's mailing
20 address if different from the residence address;

21 (5) The number of children which the juror has and their
22 ages;

23 (6) Whether the juror is a citizen of the United States and a
24 resident of the county;

25 (7) Whether the juror is able to read, speak and understand
26 the English language;

27 (8) Whether the juror has any physical or mental disability
28 substantially impairing the capacity to render satisfactory jury
29 service: *Provided*, That a juror with a physical disability, who
30 can with reasonable accommodation render competent service,
31 is eligible for service;

32 (9) Whether the juror has, within the preceding two years,
33 been summoned to serve as a petit juror, grand juror or
34 magistrate court juror, and has actually attended sessions of the
35 magistrate or circuit court and been reimbursed for his or her
36 expenses as a juror;

37 (10) Whether the juror has lost the right to vote because of
38 a criminal conviction; and

39 (11) Whether the juror has been convicted of perjury, false
40 swearing or any crime punishable by imprisonment in excess of
41 one year under the applicable law of this state, another state or
42 the United States.

43 The juror qualification form may also request information
44 concerning the prospective juror's religious preferences and
45 organizational affiliations, except that the form and the
46 accompanying instructions shall clearly inform the juror that this
47 information need not be provided if the juror declines to answer
48 such inquiries.

49 (b) The juror qualification form shall contain the prospective
50 juror's declaration that the responses are true to the best of the
51 prospective juror's knowledge and an acknowledgment that a
52 willful misrepresentation of a material fact may be punished by
53 a fine of not more than \$500 or imprisonment for not more than
54 thirty days, or both fine and imprisonment. Notarization of the
55 juror qualification form shall not be required. If the prospective
56 juror is unable to fill out the form, another person may assist the
57 prospective juror in the preparation of the form and indicate that

58 such person has done so and the reason therefor. If an omission,
59 ambiguity or error appear in a returned form, the clerk shall
60 again send the form with instructions to the prospective juror to
61 make the necessary addition, clarification or correction and to
62 return the form to the clerk within ten days after its second
63 receipt.

64 (c) Any prospective juror who fails to return a completed
65 juror qualification form as instructed shall be directed by the
66 clerk to appear forthwith before the clerk to fill out the juror
67 qualification form. At the time of the prospective juror's
68 appearance for jury service, or at the time of any interview
69 before the court or clerk, any prospective juror may be required
70 to fill out another juror qualification form in the presence of the
71 court or clerk. At that time the prospective juror may be
72 questioned with regard to the responses to questions contained
73 on the form and the grounds for the prospective juror's excuse
74 or disqualification. Any information thus acquired by the court
75 or clerk shall be noted on the juror qualification form.

76 (d) Any person who willfully misrepresents a material fact
77 on a juror qualification form or during any interview described
78 in subsection (c) of this section, for the purpose of avoiding or
79 securing service as a juror, is guilty of a misdemeanor and, upon
80 conviction thereof, shall be fined not more than \$500 or
81 imprisoned not more than thirty days, or both fined and
82 imprisoned.

83 (e) Upon the clerk's receipt of the juror qualification
84 questionnaires of persons selected as prospective petit jurors, he
85 or she shall make the questionnaires of the persons so selected
86 available, upon request, to counsel of record in the trial or trials
87 for which the persons have been selected as prospective jurors.

§52-1-8. Disqualification from jury service.

1 (a) The court, shall determine whether any prospective juror
2 is disqualified for jury service on the basis of information

3 provided on the juror qualification form or interview with the
4 prospective juror or other competent evidence. The clerk shall
5 enter this determination in the space provided on the juror
6 qualification form and on the alphabetical lists of names drawn
7 from the jury wheel or jury box.

8 (b) A prospective juror is disqualified to serve on a jury if
9 the prospective juror:

10 (1) Is not a citizen of the United States, at least eighteen
11 years old and a resident of the county;

12 (2) Is unable to read, speak and understand the English
13 language. For the purposes of this section, the requirement of
14 speaking and understanding the English language is met by the
15 ability to communicate in American Sign Language or Signed
16 English;

17 (3) Is incapable, by reason of substantial physical or mental
18 disability, of rendering satisfactory jury service. A person
19 claiming this disqualification may be required to submit a
20 physician's certificate as to the disability and the certifying
21 physician is subject to inquiry by the court at its discretion;

22 (4) Has, within the preceding two years, been summoned to
23 serve as a petit juror, grand juror or magistrate court juror and
24 has attended sessions of the magistrate or circuit court and been
25 reimbursed for his or her expenses as a juror pursuant to the
26 provisions of section twenty-one of this article, section thirteen,
27 article two of this chapter, or pursuant to an applicable rule or
28 regulation of the Supreme Court of Appeals promulgated
29 pursuant to the provisions of section eight, article five, chapter
30 fifty of this code;

31 (5) Has lost the right to vote because of a criminal
32 conviction; or

33 (6) Has been convicted of perjury, false swearing or any
34 crime punishable by imprisonment in excess of one year under
35 the applicable law of this state, another state or the United States.

36 (c) A prospective juror seventy years of age or older is not
37 disqualified from serving but shall be excused from service by
38 the court upon his or her request.

39 (d) A prospective grand juror is disqualified to serve on a
40 grand jury if he or she is an officeholder under the laws of the
41 United States or of this state except that the term "officeholder"
42 does not include notaries public.

43 (e) A person who is physically disabled and can render
44 competent service with reasonable accommodation is not
45 ineligible to act as juror and may not be dismissed from a jury
46 panel on the basis of disability alone. The circuit judge shall,
47 upon motion by either party or upon his or her own motion,
48 disqualify a disabled juror if the circuit judge finds that the
49 nature of potential evidence in the case including, but not limited
50 to, the type or volume of exhibits or the disabled juror's ability
51 to evaluate a witness or witnesses, unduly inhibits the disabled
52 juror's ability to evaluate the potential evidence. For purposes of
53 this section:

54 (1) Reasonable accommodation includes, but is not limited
55 to, certified interpreters for the hearing impaired, spokespersons
56 for the speech impaired, real-time court reporting and readers for
57 the visually impaired.

58 (2) The court shall administer an oath or affirmation to any
59 person present to facilitate communication for a disabled juror.
60 The substance of the oath or affirmation shall be that any person
61 present as an accommodation to a disabled juror will not
62 deliberate on his or her own behalf, although present throughout
63 the proceedings, but act only to accurately communicate for and
64 to the disabled juror.

65 (f) Nothing in this article limits a party's right to preemptory
66 strikes in civil or criminal actions.

CHAPTER 111

(Com. Sub. for H. B. 2498 - By Delegates Marcum,
Miley, Craig, Moore, White, Perry, Skaff,
E. Nelson, Ferro, Ferns and Eldridge)

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §52-2-15, relating to grand jury proceedings; providing misdemeanor offense for disclosure of matters occurring before a grand jury under certain circumstances; providing exceptions; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §52-2-15 to read as follows:

ARTICLE 2. GRAND JURIES.

§52-2-15. Secrecy of Grand Jury Proceedings.

1 (a) A grand juror, an interpreter, a stenographer, an operator
2 of a recording device, a typist who transcribes recorded
3 testimony, an attorney for the state, or any person to whom
4 disclosure is made under paragraph (B), subdivision (1),
5 subsection(c) of this section, shall not disclose matters occurring

6 before the grand jury, except as otherwise provided by
7 subsection (c) of this section, and rules promulgated by the
8 Supreme Court of Appeals.

9 (b) A person who knowingly violates subsection (a) of this
10 section is guilty of a misdemeanor and, upon conviction, shall be
11 fined not more than \$1,000 or confined in jail not more than
12 thirty days, or both fined and confined.

13 (c) (1) Disclosure otherwise prohibited by this section of
14 matters occurring before the grand jury, other than its
15 deliberations and the vote of any grand juror, may be made to:

16 (A) An attorney for the state for use in the performance of
17 such attorney's duty; and

18 (B) Such official personnel as are deemed necessary by an
19 attorney for the state to assist an attorney for the state in the
20 performance of such attorney's duty to enforce criminal law.

21 (2) Disclosure otherwise prohibited by this section of matters
22 occurring before the grand jury may also be made:

23 (A) When so directed by a court preliminarily to or in
24 connection with a judicial proceeding;

25 (B) When permitted by a court at the request of the
26 defendant, upon a showing that grounds may exist for a motion
27 to dismiss the indictment because of matters occurring before the
28 grand jury;

29 (C) When the disclosure is made by an attorney for the state
30 to another grand jury; or

31 (D) When permitted by a court at the request of an attorney
32 for the state, upon a showing that such matters may disclose a
33 violation of federal criminal law or of the law of another state,

34 to an appropriate official of the federal government or of such
35 other state for the purposes of enforcing such law.

CHAPTER 112

**(Com. Sub. for H.B. 2357 - By Delegates Poore,
Marshall, Moore, Hamilton, Miley, Longstreth,
Caputo, Manchin and Ellem)**

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 1, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-5-13g; and to amend said code by adding thereto a new section, designated §61-8C-3b, all relating to juvenile proceedings; proscribing juveniles from manufacturing, possessing and distributing nude or partially nude images of minors; declaring a violation to be an act of juvenile delinquency and providing for the punishment thereof; authorizing the development of an educational diversion program for minors engaged in delinquent offenses associated with sexting and related offenses; delineation of sexting and associated offenses; providing for the establishment of a specialized diversion program by the West Virginia Supreme Court of Appeals for sexting by minors and associated offenses; suggested scope and topics to be included in such specialized diversion program; providing for the participation in the diversion program as a part of a pre-petition diversion and informal resolution in advance of a filed petition, as part of a required counseling plan, or as part of an improvement period requirement established in advance of adjudication; consideration of successful completion of specialized diversion program on first offense and subsequent offenses; and allowing for

court discretion as to whether adjudicated juvenile should be required to register as a sex offender as a result of adjudication as status offender for sexting and related offenses.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §49-5-13g; and that said code be amended by adding thereto a new section, designated §61-8C-3b, all to read as follows:

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13g. Sexting educational diversion program.

1 (a) Before a juvenile petition is filed for activity proscribed
2 by article eight-a or eight-c, chapter sixty-one of this code, or
3 after probable cause has been found to believe a juvenile has
4 committed a violation thereof, but before an adjudicatory hearing
5 on the petition, the court or a prosecuting attorney may direct or
6 allow a minor who engaged in such activity to participate in an
7 educational diversion program which meets the requirements of
8 subsection (b) of this section. The prosecutor or court may refer
9 the minor to the educational diversion program, as part of a pre-
10 petition diversion and informal resolution pursuant to the
11 provisions of section two-a of this article; as part of counseling
12 provided pursuant to the provisions of sections three or three-a
13 of this article; or as part of the requirements of an improvement
14 period to be satisfied in advance of an adjudicatory hearing
15 pursuant to the provisions of section nine of this article.

16 (b) The West Virginia Supreme Court of Appeals may
17 develop an educational diversion program for minors who are
18 accused of activity proscribed by the provisions of article eight-a
19 or eight-c, chapter sixty-one of this code. As a part of any

20 specialized educational diversion program so developed, the
21 following issues and topics should be included:

22 (1) The legal consequences of and penalties for sharing
23 sexually suggestive or explicit materials, including applicable
24 federal and state statutes;

25 (2) The nonlegal consequences of sharing sexually
26 suggestive or explicit materials including, but not limited to, the
27 effect on relationships, loss of educational and employment
28 opportunities, and being barred or removed from school
29 programs and extracurricular activities;

30 (3) How the unique characteristics of cyberspace and the
31 Internet, including searchability, replicability and an infinite
32 audience, can produce long-term and unforeseen consequences
33 for sharing sexually suggestive or explicit materials; and

34 (4) The connection between bullying and cyber-bullying and
35 minors sharing sexually suggestive or explicit materials.

36 (c) Once a specialized educational diversion program is
37 established by the West Virginia Supreme Court of Appeals
38 consistent with the provisions of this section, the minor's
39 successful completion of the educational diversion program shall
40 be duly considered by the prosecutor or the court in their
41 respective decisions to either abstain from filing the juvenile
42 petition or to dismiss the juvenile petition, as follows:

43 (1) If the minor has not previously been judicially
44 determined to be delinquent, and the minor's activities represent
45 a first offense for a violation of section three-b, article eight-c,
46 chapter sixty-one of this code, the minor shall not be subject to
47 the requirements of said section, as long as he or she
48 successfully completes the educational diversion program; and

49 (2) If the minor commits a second or subsequent violation of
50 article eight-a or eight-c, chapter sixty-one of this code, the

51 minor's successful completion of the educational diversion
52 program may be considered as a factor to be considered by the
53 prosecutor and court in deciding to not file a petition or to
54 dismiss a petition, upon successful completion of an
55 improvement plan established by the court.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.

§61-8C-3b. Prohibiting juveniles from manufacturing, possessing and distributing nude or partially nude images of minors; creating exemptions; declaring a violation to be an act of juvenile delinquency; and providing for the punishment thereof.

1 (a) Any minor who intentionally possesses, creates,
2 produces, distributes, presents, transmits, posts, exchanges, or
3 otherwise disseminates a visual portrayal of another minor
4 posing in an inappropriate sexual manner or who distributes,
5 presents, transmits, posts, exchanges or otherwise disseminates
6 a visual portrayal of himself or herself posing in an inappropriate
7 sexual manner shall be guilty of an act of delinquency and upon
8 adjudication disposition may be made by the circuit court
9 pursuant to the provisions of article five, chapter forty-nine of
10 this code.

11 (b) As used in this section:

12 (1) "Posing in an inappropriate sexual manner" means
13 exhibition of a bare female breast, female or male genitalia,
14 pubic or rectal areas of a minor for purposes of sexual titillation.

15 (2) "Visual portrayal" means:

16 (A) A photograph;

- 17 (B) A motion picture;
- 18 (C) A digital image;
- 19 (D) A digital video recording; or
- 20 (E) Any other mechanical or electronic recording process or
21 device that can preserve, for later viewing, a visual image of a
22 person that includes, but is not limited to, computers, cellphones,
23 personal digital assistance and other digital storage or
24 transmitting devices;
- 25 (c) It shall be an affirmative defense to an alleged violation
26 of this section that a minor charged with possession of the
27 prohibited visual depiction did neither solicit its receipt nor
28 distribute, transmit or present it to another person by any means.
- 29 (d) Notwithstanding the provisions of article twelve, chapter
30 fifteen of this code, an adjudication of delinquency under the
31 provisions of this section shall not subject the minor to the
32 requirements of said article and chapter.

CHAPTER 113

**(Com. Sub. for S. B. 355 - By Senators
Kessler (Mr. President) and M. Hall)
[By Request of the Executive]**

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §21-5-4 of the Code of West Virginia,
1931, as amended, relating to the time final wages are required to

be paid to discharged employees; authorizing payment by mail if requested by the employee; providing that employers pay an employee all wages he or she earned at the time of quitting if the employee gives written notice of his or her intention to quit at least one pay period before quitting; defining "business day"; and making other technical changes.

Be it enacted by the Legislature of West Virginia:

That §21-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-4. Cash orders; employees separated from payroll before paydays.

1 (a) In lieu of lawful money of the United States, any person,
2 firm or corporation may compensate employees for services by
3 cash order which may include checks or money orders on banks
4 convenient to the place of employment where suitable
5 arrangements have been made for the cashing of the checks by
6 employees for the full amount of wages.

7 (b) Whenever a person, firm or corporation discharges an
8 employee, the person, firm or corporation shall pay the
9 employee's wages in full no later than the next regular payday
10 or four business days, whichever comes first. Payment shall be
11 made through the regular pay channels or, if requested by the
12 employee, by mail. For purposes of this section, "business day"
13 means any day other than Saturday, Sunday or any legal holiday
14 as set forth in section one, article two, chapter two of this code.

15 (c) Whenever an employee quits or resigns, the person, firm
16 or corporation shall pay the employee's wages in full no later
17 than the next regular payday. Payment shall be made through the
18 regular pay channels or, if requested by the employee, by mail.

19 However, if the employee gives at least one pay period's written
20 notice of intention to quit, the person, firm or corporation shall
21 pay all wages earned by the employee at the time of quitting.

22 (d) When work of any employee is suspended as a result of
23 a labor dispute, or when an employee for any reason whatsoever
24 is laid off, the person, firm or corporation shall pay in full to the
25 employee not later than the next regular payday, either through
26 the regular pay channels or by mail if requested by the
27 employee, wages earned at the time of suspension or layoff.

28 (e) If a person, firm or corporation fails to pay an employee
29 wages as required under this section, the person, firm or
30 corporation, in addition to the amount which was unpaid when
31 due, is liable to the employee for three times that unpaid amount
32 as liquidated damages. Every employee shall have a lien and all
33 other rights and remedies for the protection and enforcement of
34 his or her salary or wages, as he or she would have been entitled
35 to had he or she rendered service therefor in the manner as last
36 employed; except that, for the purpose of liquidated damages,
37 the failure shall not be deemed to continue after the date of the
38 filing of a petition in bankruptcy with respect to the employer if
39 he or she is adjudicated bankrupt upon the petition.

CHAPTER 114

**(Com. Sub. for H. B. 2652 - By Delegates Poore, Marcum,
Fleischauer, Frich, Eldridge and Sobonya)**

[Passed April 10, 2013; in effect from passage.]

[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact article 2, chapter 64 of the Code of
West Virginia, 1931, as amended, relating generally to the

promulgation of administrative rules by the Department of Administration; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing the Department of Administration to promulgate a legislative rule relating to selecting design-builders under the Design-Build Procurement Act; authorizing the Department of Administration to promulgate a legislative rule relating to state owned vehicles; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to general provisions; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to benefit determination and appeal; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers' Retirement System; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Public Employees Retirement System; and authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the West Virginia State Police.

Be it enacted by the Legislature of West Virginia:

That article 2, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF
ADMINISTRATION TO PROMULGATE
LEGISLATIVE RULES.**

§64-2-1. Department of Administration.

1 (a) The legislative rule filed in the State Register on the
2 thirtieth day of August, two thousand twelve, authorized under
3 the authority of section six, article twenty-two-a, chapter five, of
4 this code, modified by the Department of Administration to meet
5 the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the nineteenth
7 day of December, two thousand twelve, relating to the
8 Department of Administration (selecting design-builders under
9 the Design-Build Procurement Act, 148 CSR 11), is authorized,
10 with the amendment set forth below:

11 On page one, section four, subsection 4.1, line twelve,
12 following the word "Section", by striking "11" and inserting in
13 lieu thereof "10".

14 (b) The legislative rule filed in the State Register on the
15 thirtieth day of August, two thousand twelve, authorized under
16 the authority of section forty-eight, article three, chapter five-a,
17 of this code, modified by the Department of Administration to
18 meet the objections of the Legislative Rule-Making Review
19 Committee and refiled in the State Register on the nineteenth
20 day of December, two thousand twelve, relating to the
21 Department of Administration (state owned vehicles, 148 CSR
22 3), is authorized, with the amendment set forth below:

23 On page five, section six, subdivision 6.2.1, line sixteen,
24 following the words "minimum of 1664 hours weekly", by
25 striking out the number "500" and inserting in lieu thereof the
26 number "1,100".

§64-2-2. Consolidated Public Retirement Board.

1 (a) The legislative rule filed in the State Register on the
2 twenty-second day of August, two thousand twelve, authorized
3 under the authority of section one, article ten-d, chapter five, of
4 this code, modified by the Consolidated Public Retirement Board
5 to meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the twentieth day
7 of September, two thousand twelve, relating to the Consolidated
8 Public Retirement Board (general provisions, 162 CSR 1), is
9 authorized, with the following amendments:

10 On page two, section three, by striking out the subsection
11 designation 3.1;

12 On page two, section three, lines eight and nine, by
13 underlining the words “and the Municipal Police Officers and
14 Firefighters Retirement System (W.Va. Code §8-22A, et seq.)”;

15 On page two, section five, subsection 5.4, line seven, after
16 the words “involved by reason”, by striking out the word “or”
17 and inserting in lieu thereof the word “of”;

18 On page three, section six, subsection 6.1, lines five and six,
19 by underlining the words “and the Municipal Police Officers and
20 Firefighters Retirement System”;

21 On page three, subsection 6.2, following line two, by striking
22 “4.4” and inserting in lieu thereof “5.4”;

23 On page four, section seven, subdivision 7.2.c, line two, after
24 the word “~~ex-spouse~~”, by striking out the underlined word “and”;

25 On page five, section seven, subdivision 7.2.f., line ten, by
26 striking out the word “ser” and inserting in lieu thereof, the word
27 “set”;

28 On page six, subdivision 7.2.h, line three, following the
29 words “retirant and the”, by striking the words “former spouse”
30 and inserting in lieu thereof “alternate payee”;

31 And,

32 On page six, subdivision 7.2.h, line three, following the
33 words “Payments to the”, by striking the words “former spouse”
34 and inserting in lieu thereof “alternate payee”.

35 (b) The legislative rule filed in the State Register on the
36 twenty-second day of August, two thousand twelve, authorized
37 under the authority of section one, article ten-d, chapter five, of
38 this code, modified by the Consolidated Public Retirement Board
39 to meet the objections of the Legislative Rule-Making Review
40 Committee and refiled in the State Register on the twentieth day
41 of September, two thousand twelve, relating to the Consolidated
42 Public Retirement Board (benefit determination and appeal, 162
43 CSR 2), is authorized, with the following amendment:

44 On page six, section eight, by striking out the subsection
45 designation 8.1;

46 On page six, section nine, by striking out the subsection
47 designation 9.1.;

48 On page six, section nine, line four, after the words
49 “financial information”, by striking out the word “are” and
50 inserting in lieu thereof, the word “is”;

51 And,

52 On page six, section ten, by striking out the subsection
53 designation 10.1.

54 (c) The legislative rule filed in the State Register on the
55 twenty-second day of August, two thousand twelve, authorized

56 under the authority of section one, article ten-d, chapter five, of
57 this code, modified by the Consolidated Public Retirement Board
58 to meet the objections of the Legislative Rule-Making Review
59 Committee and refiled in the State Register on the twentieth day
60 of September, two thousand twelve, relating to the Consolidated
61 Public Retirement Board (Teachers' Retirement System, 162
62 CSR 4), is authorized, with the following amendment:

63 On page five, section four, subdivision 4.12.1, line four,
64 following "W.Va. Code §5-16-13(f)", by inserting "and (m)".

65 (d) The legislative rule filed in the State Register on the
66 twenty-second day of August, two thousand twelve, authorized
67 under the authority of section one, article ten-d, chapter five, of
68 this code, modified by the Consolidated Public Retirement Board
69 to meet the objections of the Legislative Rule-Making Review
70 Committee and refiled in the State Register on the twentieth day
71 of September, two thousand twelve, relating to the Consolidated
72 Public Retirement Board (Public Employees Retirement System,
73 162 CSR 5), is authorized, with the following amendment:

74 On Page three, subsection 8.1., after the word "System" by
75 changing the period to a colon and inserting the following
76 proviso: *And provided further*, That beginning July 1, 2013, each
77 participating public employer shall contribute fourteen and five-
78 tenths percent (14.5%) of each compensation payment of all its
79 employees who are members of the Public Employees
80 Retirement System.

81 (e) The legislative rule filed in the State Register on the
82 twenty-second day of August, two thousand twelve, authorized
83 under the authority of section one, article ten-d, chapter five, of
84 this code, relating to the Consolidated Public Retirement Board
85 (West Virginia State Police, 162 CSR 9), is authorized, with the
86 amendment set forth below:

87 On page eight, section two, after line seventy-nine, by
88 inserting the following:

89 On page eight, subsection 14.1., after the word “System” by
90 changing the period to a colon and inserting the following
91 proviso: “*And provided further, That beginning July 1, 2013, the*
92 *West Virginia State Police shall contribute fourteen and five-*
93 *tenths percent (14.5%) of the monthly salary of each member of*
94 *the West Virginia State Police Retirement System to the West*
95 *Virginia State Police Retirement System;*

96 On page nine, section eighteen, subsection 18.1, line five,
97 following the word “lifetime”, by inserting “or until he or she
98 remarries. If there is no surviving spouse or if the surviving
99 spouse remarries or dies, then payments are to be paid to the
100 dependent children or dependent parents of the deceased retirant
101 as provided in subsection (a), section fourteen, article two-a,
102 chapter fifteen of the code.”.

CHAPTER 115

(Com. Sub. for S. B. 243 - By Senator Snyder)

[Passed April 12, 2013; in effect from passage.]

[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Environmental Protection; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the

Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to covered electronic devices recycling; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste administrative proceedings and civil penalty assessment; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to horizontal well development; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources for the prevention of significant deterioration of air quality; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from the combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements for operating permits; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to water pollution control permit fee schedules; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the WV/NPDES regulations for coal mining facilities.

Be it enacted by the Legislature of West Virginia:

That article 3, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Department of Environmental Protection.

1 (a) The legislative rule filed in the State Register on August
2 30, 2012, authorized under the authority of section twenty-nine,
3 article fifteen-a, chapter twenty-two of this code, modified by the
4 Department of Environmental Protection to meet the objections
5 of the Legislative Rule-Making Review Committee and refiled
6 in the State Register on December 13, 2012, relating to the
7 Department of Environmental Protection (covered electronic
8 devices recycling, 33 CSR 12), is authorized with the following
9 amendment:

10 On page two, paragraph 4.1.b.1., by striking out all of
11 paragraph 4.1.b.1. and inserting in lieu thereof a new paragraph
12 4.1.b.1., to read as follows:

13 4.1.b.1. Within one year after the effective date of this rule,
14 receiving, storage, operations and shipping areas must be under
15 a roof or in an enclosed area sufficient to prevent stormwater
16 contamination.

17 (b) The legislative rule filed in the State Register on August
18 24, 2012, authorized under the authority of section seventeen,
19 article eighteen, chapter twenty-two of this code, relating to the
20 Department of Environmental Protection (hazardous waste
21 administrative proceedings and civil penalty assessment, 33 CSR
22 27), is authorized.

23 (c) The legislative rule filed in the State Register on
24 September 4, 2012, authorized under the authority of section six,
25 article six-a, chapter twenty-two of this code, modified by the
26 Department of Environmental Protection to meet the objections
27 of the Legislative Rule-Making Review Committee and refiled
28 in the State Register on February 14, 2013, relating to the
29 Department of Environmental Protection (horizontal well
30 development, 35 CSR 8), is authorized with the following
31 amendments:

32 On page two, after subsection 2.12., by inserting a new
33 subsection 2.13. to read as follows:

34 2.13. "Health care professional" means a physician,
35 physician assistant, nurse practitioner, registered nurse, or
36 emergency medical technician licensed by the State of West
37 Virginia.

38 And renumbering the remaining subsections;

39 And,

40 On page ten, section 5.6.e., line 1 and 2, by deleting the
41 sentence that reads, "A copy of the approved Water Management
42 Plan shall be available upon request." and inserting in lieu
43 thereof the following:

44 "Signage shall be posted at each water withdraw site that
45 provides how to obtain the Water Management Plan, the phone
46 number of the company conducting the withdraw, the Office's
47 web site name and phone number, and the permit number."

48 And,

49 On page ten, subsection 5.7.a, line 5, following the words "is
50 sought," by inserting the words "the anticipated MSDS Sheets,
51 and"

52 And,

53 On page ten, subsection 5.7.1, line 12, following the words
54 “emergency services.” by inserting the following:

55 “The operator shall also provide the Well Site Safety Plan to
56 the surface owner and any water purveyor or surface owner
57 subject to notice and water testing as provided in subsection 15
58 of this rule.

59 And,

60 On page nineteen, Section 9.1.b.2, line 3, following the
61 words “will be utilized” by striking out the period and inserting
62 a comma and the following:

63 “and the telephone number for the Department of
64 Environmental Protection.”

65 . And,

66 On pages twenty-three and twenty-four, by striking out all of
67 subsection 10.1. and inserting in lieu thereof a new subsection
68 10.1. to read as follows:

69 10.1. Well Records Made During Permitted Work - The well
70 operator or its contractor (service provider, drilling contractor or
71 other contractor, as appropriate) shall keep at the well location
72 a copy of the application as permitted, including the associated
73 plat and plans required by section 5 of this rule. The well
74 operator or its contractor (service provider, drilling contractor or
75 other contractor, as appropriate) shall also make and preserve at
76 the well location accurate records of all well work performed
77 pursuant to the permit, including documentation by the
78 contractor or person performing the cementing services of the
79 time of completion of cementing and the volume of cement used
80 for the cementing of all casing operations. The records shall be
81 complete enough to support, as applicable, the entries of well

82 work done and related data on Form WR-35, “Well Operator’s
83 Report of Well Work”, Form WR-36, “Well Operator’s Report
84 of Initial Gas-Oil Ratio Test”, and Form WR-38, “Affidavit of
85 Plugging and Filling Well”, but these forms shall reflect
86 information discovered or changes made after the permitted well
87 work has been finished and before the reports are filed. The
88 records made and preserved at the well location and the
89 recordings made on Form WR-35 shall include, but not be
90 limited to, indications of caverns, open mines or other voids,
91 whether the freshwater casing cement circulated to the surface,
92 and the efforts made to fill the annular space and the results.
93 Unless the records of well work performed are prepared by the
94 well operator or owner, a copy of all the records shall be
95 delivered to the well owner or operator, except for those records
96 the contractor (service provider, drilling contractor or other
97 contractor, as appropriate) designates as a confidential trade
98 secret.

99 10.1.a. As part of the well completion report (Form WR-35),
100 the operator or its service provider shall list all the additives used
101 in the hydraulic fracturing or stimulation process, including each
102 additive’s specific trade name, supplier, and purpose. The
103 operator or its service provider shall also list each chemical of
104 each additive intentionally added to a base fluid for the purpose
105 of preparing a fracturing fluid, along with each chemical’s CAS
106 registry number, if applicable, its maximum concentration in the
107 additive, and its maximum concentration as added to the base
108 fluid, and the volume of the base fluid used. The concentrations
109 shall be expressed as a mass percent. The operator or service
110 provider may designate the information regarding the specific
111 identity or concentration or both of a chemical as a confidential
112 trade secret not to be disclosed to the agency or anyone else
113 except in the event of an investigation by the office, medical
114 emergency, or for diagnostic or treatment purposes involving the
115 designated chemical, pursuant to subdivisions 10.1.d. and 10.1.e.
116 below.

117 10.1.b. The operator or service provider shall fulfill the
118 additive reporting requirement of subdivision 10.1.a. above by
119 submitting the information to the office and the FracFocus
120 Chemical Disclosure Registry.

121 10.1.c. As part of the well completion report (Form WR-35),
122 the operator shall report the volumes of fluids pumped and
123 treatment pressures recorded throughout the hydraulic fracturing
124 process.

125 10.1.d. In the event of an investigation by the office
126 involving a chemical designated as a confidential trade secret,
127 the operator or service provider shall provide the specific
128 identity of the chemical, the concentration of the chemical, or
129 both the specific identity and concentration of the chemical, as
130 needed, to the agency upon receipt of notification from the chief
131 or his or her designee stating that such information is necessary
132 in connection with an investigation by the office. Upon receipt
133 of such notification of need, such information shall be disclosed
134 by the operator or service provider, as applicable, directly to the
135 chief or his or her designee and shall in no way be construed as
136 publicly available. The chief or designee may disclose
137 information regarding the specific identity of a chemical, the
138 concentration of a chemical, or both the specific identity and
139 concentration of a chemical claimed to be a confidential trade
140 secret to additional agency staff members to the extent that such
141 disclosure is necessary to allow the agency staff member
142 receiving the information to assist in such an investigation by the
143 office, provided that such individuals shall not disseminate the
144 information further and such information shall at all times be
145 considered confidential and shall not be construed as publicly
146 available. Upon request by the operator or service provider, and
147 where a notification of need is provided orally, the chief shall
148 execute a written statement of need indicating that the
149 information was necessary in connection with an investigation
150 by the office.

151 10.1.e. The operator or service provider shall provide the
152 specific identity of a chemical designated as a confidential trade
153 secret, the concentration of the chemical designated as a
154 confidential trade secret, or both the specific identity and
155 concentration of the chemical designated as a confidential trade
156 secret, as needed, upon request to a health care professional in a
157 medical emergency, or for diagnostic or treatment purposes. The
158 health care professional shall only use the information provided
159 by the operator or service provider for diagnosis or treatment of
160 an individual, and the operator or service provider may provide
161 notice to the health care professional at the time of release of the
162 information, that the information provided is solely for diagnosis
163 or treatment of the individual, that the information may be a
164 trade secret, and disclosure to others for any other purpose may
165 subject that health care professional to a legal action by the
166 operator or service provider for violating its trade secret.”

167 And,

168 On page thirty, by striking out all of subsection 13.5.”

169 (d) The legislative rule filed in the State Register on August
170 15, 2012, authorized under the authority of section four, article
171 five, chapter twenty-two of this code, relating to the Department
172 of Environmental Protection (permits for construction and major
173 modification of major stationary sources for the prevention of
174 significant deterioration of air quality, 45 CSR 14), is authorized.

175 (e) The legislative rule filed in the State Register on August
176 14, 2012, authorized under the authority of section four, article
177 five, chapter twenty-two of this code, relating to the Department
178 of Environmental Protection (standards of performance for new
179 stationary sources, 45 CSR 16), is authorized.

180 (f) The legislative rule filed in the State Register on August
181 15, 2012, authorized under the authority of section four, article

182 five, chapter twenty-two of this code, relating to the Department
183 of Environmental Protection (control of air pollution from
184 combustion of solid waste, 45 CSR 18), is authorized.

185 (g) The legislative rule filed in the State Register on August
186 15, 2012, authorized under the authority of section four, article
187 five, chapter twenty-two of this code, relating to the Department
188 of Environmental Protection (control of air pollution from
189 hazardous waste treatment, storage or disposal facilities, 45 CSR
190 25), is authorized.

191 (h) The legislative rule filed in the State Register on August
192 15, 2012, authorized under the authority of section four, article
193 five, chapter twenty-two of this code, relating to the Department
194 of Environmental Protection (requirements for operating
195 permits, 45 CSR 30), is authorized.

196 (i) The legislative rule filed in the State Register on August
197 15, 2012, authorized under the authority of section four, article
198 five, chapter twenty-two of this code, relating to the Department
199 of Environmental Protection (emission standards for hazardous
200 air pollutants, 45 CSR 34), is authorized.

201 (j) The legislative rule filed in the State Register on August
202 30, 2012, authorized under the authority of section ten, article
203 eleven, chapter twenty-two of this code, relating to the
204 Department of Environmental Protection (water pollution control
205 permit fee schedules, 47 CSR 26), is authorized.

206 (k) The legislative rule filed in the State Register on August
207 28, 2012, authorized under the authority of section four, article
208 eleven, chapter twenty-two of this code, relating to the
209 Department of Environmental Protection (WV/NPDES
210 regulations for coal mining facilities, 47 CSR 30), is authorized.

CHAPTER 116

(Com. Sub. for S. B. 265 - By Senator Snyder)

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Health and Human Resources; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to reportable diseases, events and conditions; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to general sanitation; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to Grade A pasturized milk; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to fees for services; repealing the Bureau for Public Health's legislative rule relating to the regulation of opioid treatment programs, 64 CSR 90;

authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to pulse oximetry newborn testing; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the regulation of opioid treatment programs, 69 CSR 7; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to chronic pain management clinic licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults in West Virginia; authorizing the Health Care Authority to promulgate a legislative rule relating to the West Virginia Health Information Network; and authorizing the Bureau of Senior Services to promulgate a legislative rule relating to the in-home care worker registry.

Be it enacted by the Legislature of West Virginia:

That article 5, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF
HEALTH AND HUMAN RESOURCES TO
PROMULGATE LEGISLATIVE RULES.**

§64-5-1. Bureau for Public Health.

1 (a) The legislative rule filed in the State Register on August
2 31, 2012, authorized under the authority of section four, article
3 one, chapter sixteen of this code, modified by the Department of
4 Health and Human Resources to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in the
6 State Register on January 10, 2013, relating to the Department
7 of Health and Human Resources (reportable diseases, events and
8 conditions, 64 CSR 7), is authorized with the following
9 amendments:

10 On page twenty-four, subsection 9.1., by striking out the
11 words “the reporting” and inserting in lieu thereof the words “the
12 access”;

13 On page twenty-five, subsection 9.2., by striking out the
14 words “be reported” and inserting in lieu thereof the words “be
15 made available”;

16 On page twenty-five, subsection 9.2., by striking out the
17 words “the reporting” and inserting in lieu thereof the words “the
18 access”;

19 On page twenty-five, subsection 9.2., after the word
20 “activities” by inserting the following: “consistent with the
21 mission of the bureau. The responsibility for communication
22 with healthcare facilities regarding data collection, data quality
23 and completeness rests with the Office of Epidemiology and
24 Prevention Services within the Bureau for Public Health”;

25 And,

26 On page twenty-five, by striking out all of subsection 9.3.
27 and renumbering the remaining subsection.

28 (b) The legislative rule filed in the State Register on June 29,
29 2012, authorized under the authority of section four, article one,
30 chapter sixteen of this code, modified by the Department of
31 Health and Human Resources to meet the objections of the
32 Legislative Rule-Making Review Committee and refiled in the
33 State Register on November 15, 2012, relating to the Department
34 of Health and Human Resources (general sanitation, 64 CSR 18),
35 is authorized with the following amendment:

36 On page three, subdivision 2.13, by removing the period and
37 inserting the following, “Bed and Breakfast Inn.”

38 (c) The legislative rule filed in the State Register on August
39 27, 2012, authorized under the authority of section five, article

40 seven, chapter sixteen of this code, relating to the Department of
41 Health and Human Resources (Grade A pasturized milk, 64 CSR
42 34), is authorized.

43 (d) The legislative rule filed in the State Register on August
44 31, 2012, authorized under the authority of section one, article
45 eleven, chapter sixteen of this code, modified by the Department
46 of Health and Human Resources to meet the objections of the
47 Legislative Rule-Making Review committee and refiled in the
48 State Register on January 10, 2013, relating to the Department
49 of Health and Human Resources (fees for services, 64 CSR 51),
50 is authorized with the following amendment:

51 On page eleven, subdivision 9.7, after the word
52 “emergency”, by inserting a period and removing the
53 underscored words “or as a relevant factor associated with the
54 provision of services and may include but is not limited to,
55 supply shortages, federal or other funding restrictions of policy
56 changes impacting the ability to provide services”.

57 (e) The legislative rule filed in the State Register on October
58 11, 2012, authorized under the authority of section four, article
59 one, chapter sixteen of this code, relating to the Department of
60 Health and Human Resources (regulation of opioid treatment
61 programs, 64 CSR 90), is repealed.

62 (f) The legislative rule filed in the State Register on August
63 27, 2012, authorized under the authority of section four, article
64 one, chapter sixteen of this code, modified by the Department of
65 Health and Human Resources to meet the objections of the
66 Legislative Rule-Making Review Committee and refiled in the
67 State Register on January 10, 2013, relating to the Department
68 of Health and Human Resources (pulse oximetry newborn
69 testing, 64 CSR 100), is authorized with the following
70 amendment:

71 On page two, subdivision 5.3, by striking out the words “the
72 closest” and inserting in lieu thereof the word “an”.

§64-5-2. Department of Health and Human Resources.

1 (a) The legislative rule filed in the State Register on August
2 31, 2012, authorized under the authority of section one, article
3 eleven, chapter sixteen of this code, modified by the Department
4 of Health and Human Resources to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in the
6 State Register on February 5, 2013, relating to the Department
7 of Health and Human Resources (regulation of opioid treatment
8 programs, 69 CSR 7), is authorized with the following
9 amendment:

10 On page fourteen, by striking section 7.3 and inserting a new
11 section 7.3 to read as follows:

12 “7.3. License Fees and Inspection Costs.

13 7.3.a. All applications for an initial or renewed license shall
14 be accompanied by a non-refundable license fee in the amount
15 required by this rule. The annual renewal fee is based upon the
16 average daily total census of the program. In addition to the set
17 fee, the annual renewal fee shall be adjusted on the first day of
18 June of each year to correspond with increases in the consumer
19 price index. The base amounts for initial and renewal fees are as
20 follows:

21 7.3.a.1. Initial license fee - \$250;

22 7.3.a.2. Renewal fee - fewer than 500 patients - \$500 plus
23 adjustment;

24 7.3.a.3. Renewal fee - 500 to 1,000 patients - \$1,000 plus
25 adjustment;

26 7.3.a.4. Renewal fee - more than 1,000 patients - \$1,500 plus
27 adjustment.

28 7.3.b. An opioid treatment program shall pay for the cost of
29 the initial inspection made by the secretary prior to issuing a
30 license. The cost of the initial inspection is \$400, and shall be
31 billed to the applicant by the secretary within five business days
32 after the inspection. The cost of the initial inspection must be
33 paid in full by the applicant before a license may be issued.

34 7.3c. The Office of Health Facility Licensure and
35 Certification shall use the fee for increased oversight on opioid
36 treatment programs.”;

37 On page thirty-two, by inserting a new subdivision 18.3.j. to
38 read as follows:

39 “18.3.j. There shall be one (1) counselor for every fifty (50)
40 clients in the program.”;

41 On page fifty-three, by striking section 30.8 and inserting a
42 new section 30.8 to read as follows:

43 “30.8. Each opioid treatment program must provide
44 counseling on preventing exposure to, and the transmission of,
45 human immunodeficiency virus (HIV) disease and Hepatitis C
46 disease for each patient admitted or re-admitted to maintenance
47 or detoxification treatment. Services rendered to patients with
48 HIV disease shall comply with the requirements of section 44 of
49 this rule.”;

50 On page fifty-four, by striking subdivision 31.4.a and
51 inserting a new subdivision 31.4.a to read as follows:

52 “31.4.a. Preventing exposure to, and the transmission of,
53 HIV disease and Hepatitis C disease for each patient admitted or
54 readmitted to maintenance or detoxification treatment; and”;

55 On page fifty-six, by striking subdivision 32.2.a and
56 inserting a new subdivision 32.2.a to read as follows:

57 “32.2.a. The initial post-admission assessment shall consist
58 of a comprehensive medical evaluation, which shall include, but
59 not be limited to:

60 32.2.a.1. A comprehensive physical evaluation;

61 32.2.a.2. A comprehensive psychiatric evaluation, including
62 mental status examination and psychiatric history;

63 32.2.a.3. A personal and family medical history;

64 32.2.a.4. A comprehensive history of substance abuse, both
65 personal and family;

66 32.2.a.5. A tuberculosis skin test and chest X-ray, if skin test
67 is positive;

68 32.2.a.6. A screening test for syphilis;

69 32.2.a.7. A Hepatitis C test;

70 32.2.a.8. An HIV test to the extent voluntarily elected by the
71 patient; and

72 32.2.a.9. Other tests as necessary or appropriate (e.g., CBC,
73 EKG, chest X-ray, pap smear, hepatitis B surface antigen and
74 hepatitis B antibody testing).”;

75 On page seventy, by striking section 37.14 and inserting a
76 new section 37.14 to read as follows:

77 “37.14 The state authority may approve exceptional
78 unsupervised-medication dosages, including alternative
79 medications, on a case-by-case basis upon application for an

80 exemption by the program physician. Any authorization for
81 exceptions shall be consistent with guidelines and protocols of
82 approved authorities, provided that the authority may not grant
83 any exceptions during a calendar month which exceed three (3)
84 exceptions or ten (10) percent of the number of patients enrolled
85 in the program on the last day of the previous month, whichever
86 is greater: *Provided, That the state authority may grant*
87 *additional exceptions for inclement weather or clinic closure.”;*

88 On page seventy-three, by inserting a new subdivision 38.14
89 to read as follows:

90 “38.14 Maintenance treatment shall be discontinued within
91 two (2) continuous years after the treatment is begun unless,
92 based upon the clinical judgment of the medical director or
93 program physician and staff which shall be recorded in the
94 client’s record by the medical director or program physician, the
95 client’s status indicates that the treatment should be continued
96 for a longer period of time because discontinuance from
97 treatment would lead to a return to (i) illicit opiate abuse or
98 dependance, or (ii) increased psychiatric, behavioral or medical
99 symptomology.”;

100 On page seventy-five, by striking subdivision 41.2.d.3 and
101 inserting a new subdivision 41.2.d.3 to read as follows:

102 “41.2.d.3. When using urine as a screening mechanism, all
103 patient drug testing shall be observed to minimize the chance of
104 adulterating or substituting another individual’s urine.”;

105 And,

106 On page eighty-one, by striking subdivision 44.5.d.1. and
107 inserting a new subdivision 44.5.d.1. to read as follows:

108 “44.5.d.1. Maintenance treatment dosage levels of pregnant
109 clients shall be maintained at the lowest possible dosage level

110 that is a medically appropriate therapeutic dose as determined by
111 the medical director or clinic physician taking the pregnancy into
112 account.”

113 (b) The legislative rule filed in the State Register on January
114 7, 2013, authorized under the authority of section nine, article
115 five-h, chapter sixteen of this code, relating to the Department of
116 Health and Human Resources (chronic pain management clinic
117 licensure, 69 CSR 8), is authorized with the following
118 amendments:

119 On page one, subsection 1.4, line eleven, following the
120 number “2013.”, by inserting the following words:

121 “This rule is effective upon the date specified in an
122 emergency rule promulgated by the Department of Health and
123 Human Resources as being the date funding for implementation
124 of Chronic Pain Management Clinic Licensure will become
125 available pursuant to a duly enacted appropriation bill
126 authorizing the expenditure of funds for that purpose.”;

127 On page four, subsection 3.1., by striking out all of
128 subdivisions 3.1.a., 3.1.b., 3.1.c. and 3.1.d. and inserting in lieu
129 thereof the following:

130 3.1.a. The primary component of the medical practice of the
131 clinic, facility or office is treatment of chronic pain for non-
132 malignant conditions;

133 3.1.b. More than fifty percent of patients in any one month
134 of the prescribers are provided treatment for chronic pain for
135 nonmalignant conditions and are prescribed, administered or
136 dispensed tramadol, carisoprodol, opioid drug products or other
137 Schedule II or Schedule III controlled substances for such
138 diagnosis;

139 3.1.c. The calculation of more than fifty percent of patients
140 will be calculated by dividing the number of unique patient
141 encounters at the clinic, facility or office during any one month
142 for a diagnosis of chronic nonmalignant pain and pursuant to
143 such diagnosis of chronic nonmalignant pain were prescribed,
144 administered or dispensed tramadol, carisoprodol, opioid drugs
145 or other Scheduled II or Scheduled III controlled substances by
146 the total number of all patient encounters at the clinic, facility or
147 office during any month; and

148 3.1.d. Patients receiving tramadol, carisoprodol, opioid drug
149 products or other Schedule II or Schedule III controlled
150 substances for treatment of an injury or illness that lasts or is
151 expected to last thirty days or less shall not be included in the
152 calculation of more than fifty percent of all patients.” and
153 renumbering the remaining subdivisions;

154 On page five, by inserting a new paragraph, 3.2.i.2., to read
155 as follows:

156 “3.2.i.2. Medical practices, clinics or offices in which a
157 physician treats an average of 20 or fewer patients a day with
158 any diagnosis in any one month, and in which the physician
159 holds a Competency Certification in Controlled Substances
160 Management.”;

161 And,

162 On page thirteen, subparagraph 6.5.b.2.B., after the words
163 “Osteopathic Specialist;” by inserting the words “hold
164 Competency Certification in Controlled Substances
165 Management;”.

166 (c) The legislative rule filed in the State Register on August
167 30, 2012, authorized under the authority of section four, article
168 two-b, chapter forty-nine of this code, modified by the

169 Department of Health and Human Resources to meet the
170 objections of the Legislative Rule-Making Review Committee
171 and refiled in the State Register on January 15, 2013, relating to
172 the Department of Health and Human Resources (minimum
173 licensing requirements for residential child care and treatment
174 facilities for children and transitioning adults in West Virginia,
175 78 CSR 3), is authorized, with the following amendment:

176 On page fifty-two, paragraph 11.2.a.3., line five, by striking
177 out the word "Training" and inserting the word "Certification".

§64-5-3. Health Care Authority.

1 The legislative rule filed in the State Register on May 14,
2 2012, authorized under the authority of section seven, article
3 twenty-nine-g, chapter sixteen of this code, modified by the
4 Health Care Authority to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on July 19, 2012, relating to the Health Care Authority
7 to promulgate a legislative rule relating to (West Virginia Health
8 Information Network, 65 CSR 28), is authorized.

§64-5-4. Bureau of Senior Services.

1 The legislative rule filed in the State Register on August 31,
2 2012, authorized under the authority of section fifteen, article
3 five-p, chapter sixteen of this code, modified by the Bureau of
4 Senior Services to meet the objections of the Legislative Rule-
5 making Review Committee and refiled in the State Register on
6 January 17, 2013, relating to the Bureau of Senior Services (in-
7 home care worker registry, 76 CSR 2), is authorized with the
8 following amendment:

9 On page two, subdivision 4.1(i), by striking the word
10 "training" and inserting the word "certification"..

CHAPTER 117

**(Com. Sub. for H. B. 2626 - By Delegates Poore, Marcum,
Fleischauer, Frich and Eldridge)**

[Passed April 13, 2013; in effect from passage.]

[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact article 6, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the Department of Military Affairs and Public Safety; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Division of Protective Services to promulgate a legislative rule relating to contracted police or security services; authorizing the State Fire Commission to promulgate a legislative rule relating to the state building code; authorizing the State Fire Commission to promulgate a legislative rule relating to volunteer firefighters' training, equipment and operating standards; authorizing the Governor's Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to law enforcement training and certification standards; authorizing the Governor's Committee

on Crime, Delinquency and Correction to promulgate a legislative rule relating to the protocol for law enforcement response to stalking; and authorizing the Governor's Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to the protocol for law enforcement response to child abuse and neglect.

Be it enacted by the Legislature of West Virginia:

That article 6, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF
MILITARY AFFAIRS AND PUBLIC
SAFETY TO PROMULGATE
LEGISLATIVE RULES.**

§64-6-1. Division of Protective Services.

1 The legislative rule filed in the State Register on the thirty-
2 first day of August, two thousand twelve, authorized under the
3 authority of section three, article two-d, chapter fifteen of this
4 code, modified by the Division of Protective Services to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on the seventeenth day of
7 January, two thousand thirteen, relating to the Division of
8 Protective Services (contracted police or security services, 99
9 CSR 5), is authorized.

§64-6-2. State Fire Commission.

1 (a) The legislative rule filed in the State Register on the
2 eighteenth day of July, two thousand twelve, authorized under
3 the authority of section five-b, article three, chapter twenty-nine,
4 of this code, modified by the State Fire Commission to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on the twenty-first day of
7 December, two thousand twelve, relating to the State Fire

8 Commission (state building code, 87 CSR 4), is authorized with
9 the following amendment:

10 New One and Two Family Dwellings over one level in
11 height, New One and Two Family Dwellings containing a
12 basement, and New One and Two Family Dwellings containing
13 a crawl space containing a fuel burning appliance below the first
14 floor, shall provide one of the following methods for fire
15 protection of floors: (1) A 1/2 inch (12.7 mm) gypsum wallboard
16 membrane, 5/8 inch (16 mm) wood structural panel membrane,
17 or equivalent on the underside of the floor framing member; (2)
18 Wood floor assemblies using dimension lumber or structural
19 composite lumber equal or greater than 2 inch by 10 inch (50.8
20 mm by 254 mm) nominal dimension, or other approved floor
21 assemblies demonstrating equivalent fire performance; or (3)
22 An Automatic Fire Sprinkler System as set forth in section
23 R313.2 of the 2009 edition of the International Residential Code
24 for One and Two Family Dwellings: *Provided*, That floor
25 assemblies located directly over a space protected by an
26 automatic sprinkler system as set forth in section R313.2 of the
27 2009 edition of the International Residential Code for One and
28 Two Family Dwellings are exempt from this requirement.;

29 (b) The legislative rule filed in the State Register on the
30 thirty-first day of August, two thousand twelve, authorized under
31 the authority of section five-d, article three, chapter twenty-nine,
32 of this code, modified by the State Fire Commission to meet the
33 objections of the Legislative Rule-Making Review Committee
34 and refiled in the State Register on the twenty-first day of
35 December, two thousand twelve, relating to the State Fire
36 Commission (volunteer firefighters' training, equipment and
37 operating standards, 87 CSR 8), is authorized, with the following
38 amendments:

39 On page three, section three, by striking out subsection 3.7,
40 and inserting in lieu thereof, the following:

41 “3.7. The Fire Commission, at all times, shall have an
42 equivalency program to allow certification of fire officers in Fire
43 Officer 1 and Fire Officer 2. Any person may apply to this
44 program for certification in either Fire Officer 1, Fire Officer 2,
45 or both. This program shall evaluate a person’s practical
46 knowledge and life experience within the fire service, and any
47 previous training that person may have completed. If the person
48 has demonstrated competency in the skills taught in these
49 curricula, then the application shall be granted.

50 3.8. All operators of fire department engines, tankers,
51 aerials, and rescue trucks must have a Firefighter I certification,
52 have a valid driver’s license, and must have completed an
53 approved Emergency Vehicle Operations Course (EVOC), or
54 equivalent, and pass any and all testing required for certification:
55 *Provided that*, during maintenance or service of the vehicle, any
56 person operating a vehicle to perform his or her job, may operate
57 that vehicle as long as that person meets all other requirements
58 to operate that vehicle as set forth by statute.

59 Nothing in this rule shall prohibit specialized support
60 members or emergency medical response personnel from
61 operating fire department squads, ambulances and/or emergency
62 medical response vehicles, or prevent ancillary support members
63 of fire departments from operating utility vehicles.” and
64 renumbering the remainder of the section;

65 On page eight, after subsection 6.9, by inserting a new
66 subsection, designated 6.10., to read as follows:

67 “6.10. All fire pumps and hoses, and aerial apparatus shall
68 be tested as least annually for compliance with NFPA 1901,
69 1911, 1961 and 1962. Records of these tests shall be maintained
70 by the department for a minimum of five (5) years and shall be
71 produced by the department upon request of the Fire
72 Commission, Fire Marshal, or governmental entity overseeing
73 the Department.”

74 On page eight, section six, subsection 6.11, by striking out
75 subsection 6.11. and the remainder of the section in its entirety
76 and by inserting in lieu thereof, the following:

77 “6.11. All apparatus and associated equipment shall have
78 met the standard for that particular apparatus or piece of
79 equipment as set forth in NFPA 1901 in the year that the
80 apparatus and piece of associated equipment was manufactured,
81 and shall be fully operable.

82 6.12. At all times, at a minimum, the following items shall
83 be transported to the fire scene with the listed apparatus,
84 provided that these items shall only be required if the apparatus
85 is dispatched to an emergency scene:

86 6.12.1 Engine - as defined in NFPA 1901.

87 6.12.1.a. Current Motor Vehicle Inspection.

88 6.12.1.b. Current Emergency Vehicle Permit.

89 6.12.1.c. Fire Pump tested in accordance with subsection
90 6.10.

91 6.12.1.d. 24 foot extension ladder.

92 6.12.1.e. 14 foot straight ladder.

93 6.12.1.f. 800 feet minimum of 2 ½ inch or larger supply hose
94 tested in accordance with subsection 6.10.

95 6.12.1.g. 400 feet minimum of 1 ½ to 2 inch attack hose
96 tested in accordance with subsection 6.10.

97 6.12.1.h. sufficient number of nozzles.

98 6.12.1.i. two (2) pike poles or equivalent.

- 99 6.12.1.j. 1 pickhead axe.
- 100 6.12.1.k. 1 flathead axe.
- 101 6.12.1.l. 2 hand lights.
- 102 6.12.1.m. 1 dry chemical extinguisher.
- 103 6.12.1.n. 1 first aid kit.
- 104 6.12.1.o. 2 wheel chocks.
- 105 6.12.1.p. 1 SCBA pack (meeting NFPA 1781 standard) for
106 each seat with one spare bottle for each pack.
- 107 6.12.1.q 1 traffic vest for each seat.
- 108 6.12.2. Tanker - as defined in NFPA 1901.
- 109 6.12.2.a. Current Motor Vehicle Inspection.
- 110 6.12.2.b. Current Emergency Vehicle Permit.
- 111 6.12.2.c. If the unit contains a Fire Pump it shall be tested in
112 accordance with subsection 6.10.
- 113 6.12.2.d. If the unit contains a Fire Pump 200 feet minimum
114 of 2 ½ inch or larger supply hose tested in accordance with
115 subsection 6.10.
- 116 6.12.2.e. If the unit contains a Fire Pump 400 feet minimum
117 of 1 ½ to 2 inch attack hose tested in accordance with subsection
118 6.10.
- 119 6.12.2.f. If the unit contains a Fire Pump sufficient number
120 of nozzles.
- 121 6.12.2.g. 2 hand lights.

- 122 6.12.2.h. 1 dry chemical extinguisher.
- 123 6.12.2.i. 1 first aid kit.
- 124 6.12.2.j. 2 wheel chocks.
- 125 6.12.2.k. 1 SCBA pack (meeting NFPA 1781 standard) for
126 each seat with one spare bottle for each pack.
- 127 6.12.2.l. 1 traffic vest for each seat.
- 128 6.12.3. Aerial - as defined in NFPA 1901.
- 129 6.12.3.a. Current Motor Vehicle Inspection.
- 130 6.12.3.b. Current Emergency Vehicle Permit.
- 131 6.12.3.c. If the unit contains a Fire Pump it shall be Fire
132 Pump tested in accordance with subsection 6.10.
- 133 6.12.3.d. Aerial unit tested in accordance with subsection
134 6.10.
- 135 6.12.3.e. If the unit contains a Fire Pump 800 feet minimum
136 of 2 ½ inch or larger supply hose tested in accordance with
137 subsection 6.10.
- 138 6.12.3.f. If the unit contains a Fire Pump 400 feet minimum
139 of 1 ½ to 2 inch attack hose tested in accordance with subsection
140 6.10.
- 141 6.12.3.g. If the unit contains a Fire Pump sufficient number
142 of nozzles.
- 143 6.12.3.h. 4 Ladder Belts.
- 144 6.12.3.i. 2 hand lights.

- 145 6.12.3.j. 1 dry chemical extinguisher.
- 146 6.12.3.k. 1 first aid kit.
- 147 6.12.3.l. 2 wheel chocks.
- 148 6.12.3.m. 1 SCBA pack (meeting NFPA 1781 standard) for
149 each seat with one spare bottle for each pack.
- 150 6.12.3.n. 1 traffic vest for each seat.
- 151 6.12.4. Quint - as defined in NFPA 1901.
- 152 6.12.4.a. Current Motor Vehicle Inspection,
- 153 6.12.4.b. Current Emergency Vehicle Permit.
- 154 6.12.4.c. Fire Pump tested in accordance with subsection
155 6.10.
- 156 6.12.4.d. Aerial unit tested in accordance with subsection
157 6.10.
- 158 6.12.4.e. 300 feet minimum of 2 ½ inch or larger supply
159 hose tested in accordance with subsection 6.10.
- 160 6.12.4.f. 400 feet minimum of 1 ½ to 2 inch attack hose
161 tested in accordance with subsection 6.10.
- 162 6.12.4.g. sufficient number of nozzles.
- 163 6.12.4.h. 4 Ladder Belts.
- 164 6.12.4.i. 2 hand lights.
- 165 6.12.4.j. 1 dry chemical extinguisher.
- 166 6.12.4.k. 1 first aid kit.

- 167 6.12.4.l. 2 wheel chocks.
- 168 6.12.4.m. 1 SCBA pack (meeting NFPA 1781 standard) for
169 each seat with one spare bottle for each pack.
- 170 6.12.4.n. 1 traffic vest for each seat.
- 171 6.12.5. Mini-Pumper - as defined in NFPA 1901.
- 172 6.12.5.a. Current Motor Vehicle Inspection.
- 173 6.12.5.b. Current Emergency Vehicle Permit.
- 174 6.12.5.c. Fire Pump tested in accordance with subsection
175 6.10.
- 176 6.12.5.d. 300 feet minimum of 2 ½ inch or larger supply
177 hose tested in accordance with subsection 6.10.
- 178 6.12.5.e. 400 feet minimum of 1 ½ to 2 inch attack hose
179 tested in accordance with section 6.10.
- 180 6.12.5.f. sufficient number of nozzles.
- 181 6.12.5.g. 2 hand lights.
- 182 6.12.5.h. 1 dry chemical extinguisher.
- 183 6.12.5.i. 1 first aid kit.
- 184 6.12.5.j. 2 wheel chocks.
- 185 6.12.5.k. 1 SCBA pack (meeting NFPA 1781 standard) for
186 each seat with one spare bottle for each pack.
- 187 6.12.5.l. 1 traffic vest for each seat.
- 188 6.12.5 Service Truck - as defined in NFPA 1901.

- 189 6.12.5.a. Current Motor Vehicle Inspection.
- 190 6.12.5.b. Current Emergency Vehicle Permit.
- 191 6.12.5.c. 2 hand lights.
- 192 6.12.5.d. 1 dry chemical extinguisher.
- 193 6.12.5.e. 1 first aid kit.
- 194 6.12.5.f. 2 wheel chocks.
- 195 6.12.5.g. 1 SCBA pack (meeting NFPA 1781 standard) for
196 each seat with one spare bottle for each pack.
- 197 6.12.5.h. 1 traffic vest for each seat.
- 198 6.13. If an apparatus is not capable of transporting the
199 required equipment, as set forth in subsection 6.12, to an
200 emergency scene, a written plan must be kept on file, and be
201 capable of being produced upon demand to the Fire Commission,
202 Fire Marshal, or overseeing governmental agency, setting forth
203 a detailed procedure for transporting all necessary equipment as
204 detailed in subsection 6.12 to the emergency scene, which shall
205 be strictly adhered to. The plan not being able to be produced, or
206 the plan not being adhered to is a violation of this standard and
207 may result in revocation of the department's certification.
- 208 6.14. At all times, departments shall maintain workers
209 compensation coverage for all personnel.”;
- 210 And,
- 211 On page nine, section 8, line three, after the words “Rules
212 §87-6-1 et seq” by inserting a colon and the following:
213 “*Provided, That, except in situations of imminent danger to life*
214 *or property, upon application, the Commission shall grant a*
215 *department a 180 day period of correction, that may be extended*

216 upon good cause shown, during which the Commission shall
217 assist a department in correcting deficiencies noted, facilitating
218 training through West Virginia University or the West Virginia
219 Department of Education, and in working with other involved
220 parties, e.g. county commissions, municipal governments or
221 county fire boards.”.

**§64-6-3. Governor’s Committee on Crime, Delinquency, and
Correction.**

1 (a) The legislative rule filed in the State Register on the
2 thirty-first day of August, two thousand twelve, authorized under
3 the authority of section three, article twenty-nine, chapter thirty,
4 of this code, relating to the Governor’s Committee on Crime,
5 Delinquency and Correction (law enforcement training and
6 certification standards, 149 CSR 2), is authorized with the
7 following amendment:

8 On page twenty-five, subsection 10.2., after the words
9 “minimum period of” by striking out “four (4)” and inserting in
10 lieu thereof “three (3)”.

11 (b) The legislative rule filed in the State Register on the
12 sixteenth day of August, two thousand twelve, authorized under
13 the authority of section nine-a, article two, chapter sixty-one, of
14 this code, modified by the Governor’s Committee on Crime,
15 Delinquency and Correction to meet the objections of the
16 Legislative Rule-Making Review Committee and refiled in the
17 State Register on the fifth day of December, two thousand
18 twelve, relating to the Governor’s Committee on Crime,
19 Delinquency and Correction (protocol for law enforcement
20 response to stalking, 149 CSR 7), is authorized.

21 (c) The legislative rule filed in the State Register on the
22 sixteenth day of August, two thousand twelve, authorized under
23 the authority of section five, article nine, chapter fifteen, of this
24 code, modified by the Governor’s Committee on Crime,

25 Delinquency and Correction to meet the objections of the
26 Legislative Rule-Making Review Committee and refiled in the
27 State Register on the fifth day of December, two thousand
28 twelve, relating to the Governor's Committee on Crime,
29 Delinquency and Correction (protocol for law enforcement
30 response to child abuse and neglect, 149 CSR 8), is authorized.

CHAPTER 118

(Com. Sub. for S. B. 270 - By Senator Snyder)

[Passed April 13, 2013; in effect from passage.]
[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Revenue; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing the Insurance Commissioner to promulgate a legislative rule relating to provider-sponsored networks; authorizing the Athletic Commission to promulgate a legislative rule relating to mixed martial arts; authorizing the Racing Commission to promulgate a

legislative rule relating to thoroughbred racing; authorizing the Racing Commission to promulgate a legislative rule relating to greyhound racing; authorizing the Racing Commission to promulgate a legislative rule relating to pari-mutuel wagering; authorizing the Lottery Commission to promulgate a legislative rule relating to state lottery rules; and authorizing the State Tax Department to promulgate a legislative rule relating to the valuation of commercial and industrial real and personal property for ad valorem property tax purposes.

Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF
REVENUE TO PROMULGATE
LEGISLATIVE RULES.**

§64-7-1. Insurance Commissioner.

1 The legislative rule filed in the State Register on August 31,
2 2012, authorized under the authority of section five, article
3 twenty-five-g, chapter thirty-three of this code, modified by the
4 Insurance Commissioner to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in the
6 State Register on October 18, 2012, relating to the Insurance
7 Commissioner (provider- sponsored networks, 114 CSR 43A),
8 is authorized with the following amendments:

9 On page one, subsection 2.1., by striking out “ths” and
10 inserting in lieu thereof the word “this”;

11 And,

12 On page two, paragraph 4.3.b.1., after the words “financial
13 statements” by adding the words “that reflect positive net
14 worth”.

§64-7-2. Athletic Commission.

1 The legislative rule filed in the State Register on August 27,
2 2012, authorized under the authority of section three-a, article
3 five-a, chapter twenty-nine of this code, modified by the Athletic
4 Commission to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register on
6 October 18, 2012, relating to the Athletic Commission (mixed
7 martial arts, 177 CSR 2), is authorized with the following
8 amendments:

9 On page four, section five, line one, after the number 2500,
10 by inserting a period and striking out the remainder of the
11 sentence;

12 On page four, section six, line four, by striking out the dollar
13 amount \$35,000 and inserting in lieu thereof, the dollar amount
14 \$10,000;

15 On page six, section eight, subsection 8.1, line five, by
16 striking out the dollar amount \$30,000 and inserting in lieu
17 thereof, the dollar amount \$20,000;

18 And,

19 On page six, section eight, subsection 8.2, line two, by
20 striking out the dollar amount \$30,000 and inserting in lieu
21 thereof, the dollar amount \$20,000.”

§64-7-3. Racing Commission.

1 (a) The legislative rule filed in the State Register on August
2 27, 2012, authorized under the authority of section six, article
3 twenty-three, chapter nineteen of this code, modified by the
4 Racing Commission to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on December 4, 2012, relating to the Racing
7 Commission (thoroughbred racing, 178 CSR 1), is authorized
8 with the following amendments:

9 On page thirty-seven, subdivision 24.1.i, by striking out the
10 word “sixteen (16)” and inserting in lieu thereof the word
11 “eighteen (18)”; and

12 On page thirty-seven, subdivision 24.1.1, following the word
13 “age” by inserting the following language: “: Provided, except
14 that an occupational permit may be granted at sixteen (16) years
15 of age for the children or grandchildren of licensed permit
16 holders; licensed permit holders being defined for the purposes
17 of this subdivision as owners, breeders, trainers and
18 veterinarians”.

19 (b) The legislative rule filed in the State Register on August
20 27, 2012, authorized under the authority of section six, article
21 twenty-three, chapter nineteen of this code, relating to the
22 Racing Commission (greyhound racing, 178 CSR 2), is
23 authorized.

24 (c) The legislative rule filed in the State Register on August
25 27, 2012, authorized under the authority of section six, article
26 twenty-three, chapter nineteen of this code, relating to the
27 Racing Commission (pari-mutuel wagering, 178 CSR 5), is
28 authorized.

§64-7-4. Lottery Commission.

1 The legislative rule filed in the State Register on August 10,
2 2012, authorized under the authority of section five, article
3 twenty-two, chapter twenty-nine of this code, modified by the
4 Lottery Commission to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on December 20, 2012, relating to the Lottery
7 Commission (state lottery rules, 179 CSR 1), is authorized.

§64-7-5. State Tax Department.

1 The legislative rule filed in the State Register on August 30,
2 2012, authorized under the authority of section five, article one-

3 c, chapter eleven of this code, modified by the State Tax
4 Department to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register on
6 December 6, 2012, relating to the State Tax Department
7 (valuation of commercial and industrial real and personal
8 property for ad valorem property tax purposes, 110 CSR 1P), is
9 authorized, with the following amendments:

10 On page one, subsection 1.1, beginning on line ten, by
11 striking out subsection 1.1 in its entirety and inserting in lieu
12 thereof the following:

13 “1.1 Scope. – These regulations clarify and implement State
14 law as it relates to the appraisal at market value of commercial
15 and industrial real and personal property under W. Va. Code
16 §11-10C-10.”;

17 And,

18 On page two, subsection 2.14, line twenty-four, following
19 the words “remaining in”, by striking out the words “the
20 landlord” and inserting in lieu thereof the word “one”.

CHAPTER 119

(Com. Sub. for S. B. 281 - By Senator Snyder)

[Passed April 12, 2013; in effect from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact article 8, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Transportation; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or

administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the denial, suspension, revocation, disqualification, restriction, nonrenewal, cancellation, administrative appeals and reinstatement of motor vehicle operating privileges; authorizing the Commissioner of Highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways; and authorizing the Office of Administrative Hearings to promulgate a legislative rule relating to appeal procedures.

Be it enacted by the Legislature of West Virginia:

That article 8, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF
TRANSPORTATION TO PROMULGATE
LEGISLATIVE RULES.**

§64-8-1. Division of Motor Vehicles.

1 The legislative rule filed in the State Register on August 30,
2 2012, authorized under the authority of section nine, article two,
3 chapter seventeen-a, of this code, modified by the Division of
4 Motor Vehicles to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register on

6 December 21, 2012, relating to the Division of Motor Vehicles
7 (denial, suspension, revocation, disqualification, restriction,
8 nonrenewal, cancellation, administrative appeals and
9 reinstatement of motor vehicle operating privileges, 91 CSR 5),
10 is authorized with the following amendments:

11 On page one, in the title, by striking out the word
12 “PROPOSED”;

13 On page two, paragraph 3.2.c.1., after the words “under
14 consideration;” by adding the word “or”;

15 On page three, subdivision 3.2.e., by striking out the words
16 “subdivisions 3.2.a, 3.2.b or 3.2.c” and inserting in lieu thereof
17 the word “subsection 3.2.”;

18 On page three, subsection 3.3., by striking out the words
19 “notice submitted pursuant” and inserting in lieu thereof the
20 words “opinion submitted pursuant”;

21 On page three, subsection 3.3., by striking out the words
22 “notice submitted by” and inserting in lieu thereof the words
23 “professional opinion submitted by”;

24 On page three, subsection 3.3., by striking out the word
25 “subsection 9.2.b.” and inserting in lieu thereof the word
26 “subdivision 9.2.b.”;

27 On page four, paragraph 3.3.a.1., by striking out the word
28 “States;” and inserting in lieu thereof the words “States and who
29 practices in the specialty field of the medical condition under
30 consideration; or”;

31 On page four, by striking out all of paragraph 3.3.a.2.;

32 And renumbering the remaining paragraph;

33 On page four, paragraph 3.3.a.3., after the word “States” by
34 inserting the words “who practices in the specialty field of the
35 vision condition under consideration.”;

36 On page six, subdivision 3.5.c., after the word
37 “Rehabilitation” by inserting the word “Services”;

38 On page ten, subsection 7.1., by striking out “§17B-3-6(3)”
39 and inserting in lieu thereof “§17B-3-6(a)”;

40 On page sixteen, subsection 7.9., by inserting a period after
41 “7.9”;

42 On page seventeen, subsection 7.13., by striking out the
43 following: The Office of Administrative Hearings shall use the
44 Division’s record to determine whether the point totals are
45 correct and whether the person suspended is the person named
46 in the citations. The burden of proof is on the driver.;

47 On page nineteen, subsection 8.2., by striking out “§17B-2-
48 3a(j)(2)(G)” and inserting in lieu thereof “§17B-2-3a”;

49 On page nineteen, subdivision 8.2.a., by striking out “§17B-
50 2-3a(j)(2)(H)” and inserting in lieu thereof “§17B-2-3a”;

51 On page nineteen, subdivision 8.2.b., by striking out “§17B-
52 2-3a(k)(1)(B)” and inserting in lieu thereof “§17B-2-3a”;

53 On page twenty-five, subsection 11.6., by striking out the
54 following: The Office of Administrative Hearings shall use the
55 Division’s record to determine timely compliance with the
56 citations and whether the person suspended is the person named
57 in the citations. The burden of proof is on the driver.;

58 On page twenty-seven, subsection 12.3., by striking out the
59 following: The Office of Administrative Hearings shall use the
60 Division’s record to determine identity and age of the licensee.
61 The burden of proof is on the driver.;

62 On page twenty-eight, subsection 13.1., by striking out the
63 following: The Division may not act on any failure to pay report
64 transmitted to the Division more than one year from the date of
65 the conviction.;

66 On page twenty-nine, subsection 13.5., by striking out the
67 following: The Office of Administrative Hearings shall use the
68 Division's record to determine timely compliance with the
69 citations and whether the person suspended is the person named
70 in the citations. The burden of proof is on the driver.;

71 On page thirty-one, subsection 15.5., by striking out the
72 following: The Office of Administrative Hearings shall use the
73 Division's record to determine whether the person suspended is
74 the person named in the court order. The burden of proof is on
75 the driver.;

76 On page thirty-four, subdivision 16.3.a., by striking out the
77 words "for licensees of his her state or jurisdiction";

78 On page thirty-seven, paragraph 16.3.d.11, by striking out
79 the word "Subdivision 13.6.d.8" and inserting in lieu thereof the
80 word "Paragraph 16.3.d.8";

81 On page thirty-seven, paragraph 16.3.d.12, by striking out
82 the word "Subdivision 13.6.d.8" and inserting in lieu thereof the
83 word "Paragraph 16.3.d.8";

84 On page thirty-seven, paragraph 16.3.d.13, by striking out
85 the word "Subdivision 13.6.d.8" and inserting in lieu thereof the
86 word "Paragraph 16.3.d.8";

87 And,

88 On page thirty-nine, subdivision 16.5.b, after the words
89 "with a valid registration" by inserting a period.

§64-8-2. Division of Highways.

1 The legislative rule filed in the State Register on July 30,
2 2012, authorized under the authority of section seven, article
3 eighteen, chapter twenty-two, of this code, modified by the
4 Commissioner of Highways to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in the
6 State Register on September 30, 2012, relating to the
7 Commissioner of Highways (transportation of hazardous wastes
8 upon the roads and highways, 157 CSR 7), is authorized.

§64-8-3. Office of Administrative Hearings.

1 The legislative rule filed in the State Register on August 30,
2 2012, authorized under the authority of section four-a, article
3 five-c, chapter seventeen-c of this code, relating to the Office of
4 Administrative Hearings (appeal procedures, 105 CSR 1), is
5 authorized with the following amendments:

6 On page two, subsection 4.2., by striking out the words “an
7 address” and inserting in lieu thereof the words “the most recent
8 address”;

9 On page three, subsection 5.5., by striking out the word
10 “proceedings” and inserting in lieu thereof the word “action”;

11 On page four, subsection 7.1., after the words “within thirty
12 (30)” by inserting the word “calendar”;

13 On page four, subsection 7.1., after the words “necessary for
14 proof of” by inserting the words “the filing of”;

15 On page five, subsection 7.7., after the words “DUI case” by
16 inserting the words “or any other contested case”;

17 On page five, subsection 8.5., by striking out the word “on”
18 and inserting in lieu thereof the word “to”;

19 On page seven, subsection 10.6., by striking out the words
20 “anticipated plea,”;

21 On page eight, subsection 10.6., by striking out the word
22 “received” and inserting in lieu thereof the word “receive”;

23 On page eight, subsection 10.6., by striking out the words
24 “cancelled or continued” and inserting in lieu thereof the words
25 “cancels or continues”;

26 On page eight, subsection 11.1., by striking out the word
27 “submission” and inserting in lieu thereof the word
28 “production”;

29 On page eleven, subsection 15.8., by striking out the word
30 “seven (7)” and inserting in lieu thereof the word “ten (10)”;

31 And,

32 On page twelve, subsection 17.5., by striking out “appeals a
33 final order, the appealing” and inserting in lieu thereof “petitions
a court for judicial review of a final order, the petitioning”.

CHAPTER 120

**(Com. Sub. for H. B. 2689 - By Delegates Poore, Marcum,
Fleischauer and Eldridge.)**

[Passed April 13, 2013; in effect from passage.]

[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto;

legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Board of Medicine to promulgate a legislative rule relating to practitioner requirements for accessing the West Virginia controlled substances monitoring program database; authorizing the Board of Medicine to promulgate a legislative rule relating to licensure, disciplinary and complaint procedures; continuing education; and physician assistants; authorizing the Board of Medicine to promulgate a legislative rule relating to continuing education for physicians and podiatrists; authorizing the Board of Optometry to promulgate a legislative rule relating to continuing education; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to practitioner requirements for controlled substances licensure and accessing the West Virginia controlled substances monitoring program database; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to osteopathic physician assistants; authorizing the Board of Pharmacy to promulgate a legislative rule relating to ephedrine and pseudoephedrine control; authorizing the Board of Pharmacy to promulgate a legislative rule relating to controlled substances monitoring; authorizing the Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to requirements for licensure and certification; authorizing the Real

Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to renewal of licensure - qualifications for renewal; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to fees for services rendered by the Board and supplemental renewal fee for the center for nursing; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to practitioner requirements for accessing the West Virginia controlled substances monitoring program database; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to the announcement of advanced practice; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to limited prescriptive authority for nurses in advanced practice; authorizing the Secretary of State to promulgate a legislative rule relating to the Uniform Commercial Code; authorizing the Secretary of State to promulgate a legislative rule relating to administration of the address confidentiality program; authorizing the Secretary of State to promulgate a legislative rule relating to the regulation of political party headquarters financing; authorizing the Secretary of State to promulgate a legislative rule relating to the regulation of late registration; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to the procedures, criteria and curricula for examination and licensure of barbers, cosmetologists, nail technicians, aestheticians and hair stylists; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to barber apprenticeships; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to the operational standards for schools of barbering and beauty culture; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to poultry litter and manure movement into primary poultry breeder rearing

areas; authorizing the Board of Architects to promulgate a legislative rule relating to the registration of architects; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the Board; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to practitioner requirements for accessing the West Virginia controlled substances monitoring program database; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to continuing education requirements; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the expanded duties of dental hygienists and dental assistants; authorizing the Hatfield-McCoy Regional Recreation Authority to promulgate a legislative rule relating to rules for use of the facility; authorizing the Treasurer's Office to promulgate a legislative rule relating to the enforcement of the Uniform Unclaimed Property Act; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to the organization and operation and licensing of veterinarians; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to a schedule of fees; authorizing the Board of Social Work to promulgate a legislative rule relating to a fee schedule; authorizing the Board of Social Work to promulgate a legislative rule relating to qualifications for the profession social work; authorizing the Board of Social Work to promulgate a legislative rule relating to applications; authorizing the Board of Social Work to promulgate a legislative rule relating to continuing education for social workers and providers; authorizing the Board of Social Work to promulgate a legislative rule relating to a code of ethics; authorizing the Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to the licensure of speech-pathology and audiology; and authorizing the Conservation Committee to promulgate a legislative rule relating to the operation of the West Virginia State Conservation Committee and conservation districts.

Be it enacted by the Legislature of West Virginia:

That article 9, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Board of Medicine.

1 (a) The legislative rule filed in the State Register on the
2 twenty-eighth day of August, two thousand twelve, authorized
3 under the authority of section five-a, article nine, chapter sixty-a,
4 of this code, modified by the Board of Medicine to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on the sixth day of December,
7 two thousand twelve, relating to the Board of Medicine
8 (practitioner requirements for accessing the West Virginia
9 controlled substances monitoring program data base, 11 CSR
10 10), is authorized.

11 (b) The legislative rule filed in the State Register on the
12 twenty-eighth day of August, two thousand twelve, authorized
13 under the authority of section seven, article three, chapter thirty,
14 of this code, modified by the Board of Medicine to meet the
15 objections of the Legislative Rule-Making Review Committee
16 and refiled in the State Register on the sixth day of December,
17 two thousand twelve, relating to the Board of Medicine
18 (licensure, disciplinary and complaint procedures; continuing
19 education; and physician assistants, 11 CSR 1B), is authorized.

20 (c) The legislative rule filed in the State Register on the
21 twenty-eighth day of August, two thousand twelve, authorized
22 under the authority of section seven, article three, chapter thirty,
23 of this code, modified by the Board of Medicine to meet the
24 objections of the Legislative Rule-Making Review Committee

25 and refiled in the State Register on the sixth day of December,
26 two thousand twelve, relating to the Board of Medicine
27 (continuing education for physicians and podiatrists, 11 CSR 6),
28 is authorized.

§64-9-2. Board of Optometry.

1 (a) The legislative rule filed in the State Register on the
2 thirty-first day of August, two thousand twelve, authorized under
3 the authority of section six, article eight, chapter thirty, of this
4 code, modified by the Board of Optometry to meet the objections
5 of the Legislative Rule-Making Review Committee and refiled
6 in the State Register on the fourteenth day of December, two
7 thousand twelve, relating to the Board of Optometry (continuing
8 education, 14 CSR 10), is authorized.

§64-9-3. Board of Osteopathic Medicine.

1 (a) The legislative rule filed in the State Register on the
2 twenty-eighth day of August, two thousand twelve, authorized
3 under the authority of section four, article one, chapter thirty, of
4 this code, modified by the Board of Osteopathic Medicine to
5 meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the twelfth day of
7 December, two thousand twelve, relating to the Board of
8 Osteopathic Medicine (licensing procedures for osteopathic
9 physicians, 24 CSR 1), is authorized with the following
10 amendments:

11 On page four, subsection 4.11., after the word "licensure."
12 by adding the following: The training shall be provided by a
13 Board approved program.;

14 On page thirteen, subdivision 15.2.g., after the words
15 "minimum of three (3) hours of" by inserting the words "board
16 approved";

17 (b) The legislative rule filed in the State Register on the
18 twenty-eighth day of August, two thousand twelve, authorized
19 under the authority of section five-a, article nine, chapter sixty-a,
20 of this code, modified by the Board of Osteopathic Medicine to
21 meet the objections of the Legislative Rule-Making Review
22 Committee and refiled in the State Register on the twelfth day of
23 December, two thousand twelve, relating to the Board of
24 Osteopathic Medicine (practitioner requirements for controlled
25 substances licensure and accessing the West Virginia controlled
26 substances monitoring program database, 24 CSR 7), is
27 authorized.

28 (c) The legislative rule filed in the State Register on the
29 twenty-eighth day of August, two thousand twelve, authorized
30 under the authority of section four, article one, chapter thirty, of
31 this code, modified by the Board of Osteopathic Medicine to
32 meet the objections of the Legislative Rule-Making Review
33 Committee and refiled in the State Register on the twelfth day of
34 December, two thousand twelve, relating to the Board of
35 Osteopathic Medicine (osteopathic physician assistants, 24 CSR
36 2), is authorized with the following amendments:

37 On page eleven, subsection 7.4., after the words “3 hours of”
38 by inserting the words “Board approved”;

§64-9-4. Board of Pharmacy.

1 (a) The legislative rule filed in the State Register on the
2 thirty-first day of August, two thousand twelve, authorized under
3 the authority of section six, article nine, chapter sixty-a, of this
4 code, modified by the Board of Pharmacy to meet the objections
5 of the Legislative Rule-Making Review Committee and refiled
6 in the State Register on the seventh day of February, two
7 thousand thirteen, relating to the Board of Pharmacy (ephedrine
8 and pseudoephedrine control, 15 CSR 11), is authorized.

9 (b) The legislative rule filed in the State Register on the
10 thirty-first day of August, two thousand twelve, authorized under
11 the authority of section six, article nine, chapter sixty-a, of this
12 code, modified by the Board of Pharmacy to meet the objections
13 of the Legislative Rule-Making Review Committee and refiled
14 in the State Register on the seventh day of February, two
15 thousand thirteen, relating to the Board of Pharmacy (controlled
16 substances monitoring, 15 CSR 8), is authorized.

§64-9-5. Real Estate Appraiser Licensing and Certification Board.

1 (a) The legislative rule filed in the State Register on the
2 thirty-first day of August, two thousand twelve, authorized under
3 the authority of section nine, article thirty-eight, chapter thirty,
4 of this code, modified by the Real Estate Appraiser Licensing
5 and Certification Board to meet the objections of the Legislative
6 Rule-Making Review Committee and refiled in the State
7 Register on the nineteenth day of December, two thousand
8 twelve, relating to the Real Estate Appraiser Licensing and
9 Certification Board (requirements for licensure and certification,
10 190 CSR 2), is authorized.

11 (b) The legislative rule filed in the State Register on the
12 thirty-first day of August, two thousand twelve, authorized under
13 the authority of section nine, article thirty-eight, chapter thirty,
14 of this code, relating to the Real Estate Appraiser Licensing and
15 Certification Board (renewal of licensure - qualifications for
16 renewal, 190 CSR 3), is authorized.

§64-9-6. Board of Examiners for Registered Professional Nurses.

1 (a) The legislative rule filed in the State Register on the first
2 day of August, two thousand twelve, authorized under the
3 authority of section five, article seven, chapter thirty, of this
4 code, modified by the Board of Examiners for Registered
5 Professional Nurses to meet the objections of the Legislative

6 Rule-Making Review Committee and refiled in the State
7 Register on the seventh day of December, two thousand twelve,
8 relating to the Board of Examiners for Registered Professional
9 Nurses (fees for services rendered by the Board and
10 supplemental renewal fee for the center for nursing, 19 CSR 12),
11 is authorized.

12 (b) The legislative rule filed in the State Register on the
13 thirty-first day of July, two thousand twelve, authorized under
14 the authority of section five-a, article nine, chapter sixty-a, of
15 this code, modified by the Board of Examiners for Registered
16 Professional Nurses to meet the objections of the Legislative
17 Rule-Making Review Committee and refiled in the State
18 Register on the seventh day of December, two thousand twelve,
19 relating to the Board of Examiners for Registered Professional
20 Nurses (practitioner requirements for accessing the West
21 Virginia controlled substances monitoring program database, 19
22 CSR 14), is authorized.

23 (c) The legislative rule filed in the State Register on the
24 second day of August, two thousand twelve, authorized under the
25 authority of section one, article seven, chapter thirty, of this
26 code, modified by the Board of Examiners for Registered
27 Professional Nurses to meet the objections of the Legislative
28 Rule-Making Review Committee and refiled in the State
29 Register on the seventh day of December, two thousand twelve,
30 relating to the Board of Examiners for Registered Professional
31 Nurses (announcement of advanced practice, 19 CSR 7), is
32 authorized.

33 (d) The legislative rule filed in the State Register on the first
34 day of August, two thousand twelve, authorized under the
35 authority of section fifteen-a, article seven, chapter thirty, of this
36 code, modified by the Board of Examiners for Registered
37 Professional Nurses to meet the objections of the Legislative
38 Rule-Making Review Committee and refiled in the State

39 Register on the seventh day of December, two thousand twelve,
40 relating to the Board of Examiners for Registered Professional
41 Nurses (limited prescriptive authority for nurses in advanced
42 practice, 19 CSR 8), is authorized.

§64-9-7. Secretary of State.

1 (a) The legislative rule filed in the State Register on the
2 thirty-first day of August, two thousand twelve, authorized under
3 the authority of section five hundred twenty-six, article nine,
4 chapter forty-six, of this code, modified by the Secretary of State
5 to meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the eighteenth
7 day of January, two thousand thirteen, relating to the Secretary
8 of State (Uniform Commercial Code, 153 CSR 35), is
9 authorized.

10 (b) The legislative rule filed in the State Register on the
11 fourteenth day of August, two thousand twelve, authorized under
12 the authority of section one hundred ten, article twenty-eight-a,
13 chapter forty-eight, of this code, modified by the Secretary of
14 State to meet the objections of the Legislative Rule-Making
15 Review Committee and refiled in the State Register on the
16 eighteenth day of January, two thousand thirteen, relating to the
17 Secretary of State (administration of the address confidentiality
18 program, 153 CSR 37), is authorized.

19 (c) The legislative rule filed in the State Register on the
20 twenty-seventh day of August, two thousand twelve, authorized
21 under the authority of section six-a, article two, chapter three, of
22 this code, modified by the Secretary of State to meet the
23 objections of the Legislative Rule-Making Review Committee
24 and refiled in the State Register on the twenty-third day of
25 January, two thousand thirteen, relating to the Secretary of State
26 (regulation of political party headquarters financing, 153 CSR
27 43), is authorized.

28 (d) The legislative rule filed in the State Register on the
29 thirty-first day of August, two thousand twelve, authorized under
30 the authority of section six-a, article two, chapter three, of this
31 code, modified by the Secretary of State to meet the objections
32 of the Legislative Rule-Making Review Committee and refiled
33 in the State Register on the eighteenth day of January, two
34 thousand thirteen, relating to the Secretary of State (regulation
35 of late registration, 153 CSR 44), is authorized.

§64-9-8. Board of Barbers and Cosmetologists.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of June, two thousand twelve, authorized under
3 the authority of section six, article twenty-seven, chapter thirty,
4 of this code, relating to the Board of Barbers and Cosmetologists
5 (procedures, criteria and curricula for examination and licensure
6 of barbers, cosmetologists, nail technicians, aestheticians and
7 hair stylists, 3 CSR 1), is authorized.

8 (b) The legislative rule filed in the State Register on the
9 twenty-ninth day of June, two thousand twelve, authorized under
10 the authority of section six, article twenty-seven, chapter thirty,
11 of this code, modified by the Board of Barbers and
12 Cosmetologists to meet the objections of the Legislative Rule-
13 Making Review Committee and refiled in the State Register on
14 the tenth day of January, two thousand thirteen, relating to the
15 Board of Barbers and Cosmetologists (barber apprenticeships, 3
16 CSR 13), is authorized.

17 (c) The legislative rule filed in the State Register on the
18 twenty-second day of August, two thousand twelve, authorized
19 under the authority of section six, article twenty-seven, chapter
20 thirty, of this code, modified by the Board of Barbers and
21 Cosmetologists to meet the objections of the Legislative Rule-
22 Making Review Committee and refiled in the State Register on
23 the twenty-ninth day of January, two thousand thirteen, relating

24 to the Board of Barbers and Cosmetologists (operational
25 standards for schools of barbering and beauty culture, 3 CSR 4),
26 is authorized, with the following amendment:

27 On page four, subdivision 3.2(1), after the stricken word
28 “within” by striking the words, “five (5) day”; and

29 On page four, subsection 3.2, subdivision (1), by striking out
30 the words “Student Catalogs and” and inserting in lieu thereof
31 “School Catalogs”;

32 On page four, subsection 3.2, subdivision (q), after the word
33 “student” by striking out the words “policy book” and inserting
34 in lieu thereof the word “handbook”;

35 On page four, by striking subdivision 3.2(s) in its entirety;
36 and

37 On page seven, by striking subsection 7.1, and inserting a
38 new subsection 7.1 to read as follows,

39 “7.1 Daily Records - Each school shall keep a daily class
40 record of each student, showing the number hours earned daily,
41 the total number of hours the student is in attendance and the
42 days each student is absent. Daily hours shall be recorded by the
43 school using a time tracking system that can not be edited by a
44 student. Each student shall clock himself or herself in and out of
45 school.”

§64-9-9. Commissioner of Agriculture.

1 (a) The legislative rule filed in the State Register on the
2 thirty-first day of August, two thousand twelve, authorized under
3 the authority of section two, article nine, chapter nineteen, of this
4 code, relating to the Commissioner of Agriculture (animal
5 disease control, 61 CSR 1), is authorized.

6 (b) The legislative rule filed in the State Register on the
7 thirty-first day of August, two thousand twelve, authorized under
8 the authority of section two, article nine, chapter nineteen, of this
9 code, modified by the Department of Agriculture to meet the
10 objections of the Legislative Rule-Making Review Committee
11 and refiled in the State Register on the fifth day of December,
12 two thousand twelve, relating to the Commissioner of
13 Agriculture (poultry litter and manure movement into primary
14 poultry breeder rearing areas, 61 CSR 28, is authorized, with the
15 following amendment:

16 On page four, section five, line three, by striking out the
17 entire section five and renumbering the remaining sections.

§64-9-10. Board of Architects.

1 The legislative rule filed in the State Register on the
2 sixteenth day of August, two thousand twelve, authorized under
3 the authority of section one, article twelve, chapter thirty, of this
4 code, modified by the Board of Architects to meet the objections
5 of the Legislative Rule-Making Review Committee and refiled
6 in the State Register on the tenth day of October, two thousand
7 twelve, relating to the Board of Architects (registration of
8 architects, 2 CSR 1), is authorized, with the following
9 amendment:

10 On page four, subdivision 2.2.17. after the word “apartment”
11 by inserting the word “and”;

12 On page four, subdivision 2.2.17. after the word
13 “Condominiums” by striking out the words “and dormitories.”;

14 On page six, subdivision 2.2.26. after the words “Other
15 review, or review and corrections, of technical submissions
16 after” by striking out the word “thy” and inserting in lieu thereof
17 the word “they”;

18 On page nine, subdivision 3.11.1. after the words “certificate
19 of” by striking out the underlined words “good standing” and
20 reinserting the stricken word “registration” and;

21 On page nine, paragraph 3.11.2.a. after the word “grading”
22 by inserting a comma;

23 On page ten, subsection 3.12. after the words “before the
24 Board,” by striking out the underlined words “no one shall” and
25 reinserting the stricken words “an applicant or licensee may not”
26 and;

27 On page ten, subsection 4.1. after the words “an applicant
28 for” by reinserting the stricken words “a certificate of”;

29 On page ten, subdivision 5.1.1. by striking out the section in
30 its entirety and inserting in lieu thereof the following:

31 “To be eligible for a certificate of registration, other than
32 pursuant to §2-1-6 of this rule, an applicant shall meet the
33 following requirements:”;

34 On page eleven, paragraph 5.1.1.b. after the word
35 “NCARB’s” by striking out the remainder of said paragraph and
36 inserting in lieu thereof the words “education standards
37 applicable upon passage of this rule during the 2013 Regular
38 Session of the West Virginia Legislature”;

39 On page eleven, paragraph 5.1.1.c. after the words
40 “stipulated by NCARB” by striking out the underlined words
41 “and as accepted by the board”;

42 On page eleven, paragraph 5.1.1.d. after the words “took the
43 examination” by striking out the comma and the words “as
44 accepted by the board” and inserting in lieu thereof a period;

45 On page eleven, subdivision 5.1.4. by reinserting the stricken
46 words “Prior to granting a certificate of registration”, and by

47 striking out the underlined words “When evaluation
48 qualifications” and by striking out the comma and the underlined
49 words “prior to reaching its decision”;

50 On page twelve, subdivision 6.1.2. after the words “to the
51 Board concerning the applicant” by striking out the comma and
52 the words “as the board considers pertinent”;

53 On page thirteen, subdivision 7.3.3. after both instances of
54 the the words “the Board” by striking both instances of the word
55 “will” and inserting in lieu thereof in both instances the word
56 “shall”;

57 On page fifteen, subdivision 8.4.b. by restoring the stricken
58 words “United States”;

59 On page fifteen, subsection 8.6. after the words “non-
60 renewal of any” by reinstating the stricken words “certificate
61 of”;

62 On page seventeen, subdivision 9.1.2 after the words “and
63 municipal building laws” by reinserting the stricken words “and
64 rules and ordinances”;

65 On page seventeen, subdivision 9.1.2 after the words “in
66 violation of those laws” by reinserting the stricken words “and
67 rules and ordinances”;

68 On page nineteen, subdivision 9.3.3.a. after the words
69 “municipal building laws” by restoring the stricken words “and
70 rules or ordinances”;

71 On page nineteen, paragraph 9.3.3.c. after the words “the
72 project” by striking out the underlined words “unless the
73 registered architect is able to cause the matter to be resolved by
74 other means”; and

75 On page twenty, subdivision 9.4.3. after the words
76 “disciplinary action if” by striking out the underlined words
77 “based on grounds substantially similar to those which lead to
78 disciplinary action in this jurisdiction, the architect was
79 disciplined in any other United States jurisdiction” and inserting
80 in lieu thereof the words “he or she was disciplined in another
81 jurisdiction in the United States where the grounds for discipline
82 are substantially similar to those in West Virginia”.

§64-9-11. Board of Dental Examiners.

1 (a) The legislative rule filed in the State Register on the
2 thirty-first day of August, two thousand twelve, authorized under
3 the authority of section six, article four, chapter thirty, of this
4 code, relating to the Board of Dental Examiners (rule for the
5 West Virginia Board of Dental Examiners, 5 CSR 1), is
6 authorized.

7 (b) The legislative rule filed in the State Register on the
8 thirty-first day of August, two thousand twelve, authorized under
9 the authority of section five-a, article nine, chapter sixty-a, of
10 this code, modified by the Board of Dental Examiners to meet
11 the objections of the Legislative Rule-Making Review
12 Committee and refiled in the State Register on the sixth day of
13 December, two thousand twelve, relating to the Board of Dental
14 Examiners (practitioner requirements for accessing the West
15 Virginia controlled substances monitoring program database, 5
16 CSR 10), is authorized.

17 (c) The legislative rule filed in the State Register on the
18 thirty-first day of August, two thousand twelve, authorized under
19 the authority of section seven-a, article one, chapter thirty, of
20 this code, modified by the Board of Dental Examiners to meet
21 the objections of the Legislative Rule-Making Review
22 Committee and refiled in the State Register on the sixth day of
23 December, two thousand twelve, relating to the Board of Dental

24 Examiners (continuing education requirements, 5 CSR 11), is
25 authorized.

26 (d) The legislative rule filed in the State Register on the
27 thirty-first day of August, two thousand twelve, authorized under
28 the authority of section six, article four, chapter thirty, of this
29 code, relating to the Board of Dental Examiners (expanded
30 duties of dental hygienists and dental assistants, 5 CSR 13), is
31 authorized.

§64-9-12. Hatfield-McCoy Regional Recreation Authority.

1 The legislative rule filed in the State Register on the thirtieth
2 day of August, two thousand twelve, authorized under the
3 authority of section five, article fourteen, chapter twenty, of this
4 code, modified by the Hatfield-McCoy Regional Recreation
5 Authority to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the sixth
7 day of December, two thousand twelve, relating to the Hatfield-
8 McCoy Regional Recreation Authority (rules for use of facility,
9 204 CSR 1), is authorized.

§64-9-13. Treasurer's Office.

1 The legislative rule filed in the State Register on the
2 sixteenth day of August, two thousand twelve, authorized under
3 the authority of section twenty-eight, article eight, chapter thirty-
4 six, of this code, modified by the Treasurer's Office to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on the twenty-fifth day of
7 September, two thousand twelve, relating to the Treasurer's
8 Office (enforcement of the Uniform Unclaimed Property Act,
9 112 CSR 5), is authorized, with the following amendment:

10 On page six, subsection eleven, line eleven, following the
11 words "under the Act", by striking out the words "or under the

12 Unclaimed Stolen Property Act” and inserting in lieu thereof the
13 words “or under W.Va Code §36-8A-1, et seq.”

§64-9-14. Board of Veterinary Medicine.

1 (a) The legislative rule filed in the State Register on the
2 thirtieth day of July, two thousand twelve, authorized under the
3 authority of section six, article ten, chapter thirty, of this code,
4 modified by the Board of Veterinary Medicine to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on the twenty-fifth day of
7 October, two thousand twelve, relating to the Board of
8 Veterinary Medicine (organization and operation and licensing
9 of veterinarians, 26 CSR 1), is authorized.

10 (b) The legislative rule filed in the State Register on the
11 thirtieth day of July, two thousand twelve, authorized under the
12 authority of section six, article ten, chapter thirty, of this code,
13 modified by the Board of Veterinary Medicine to meet the
14 objections of the Legislative Rule-Making Review Committee
15 and refiled in the State Register on the twenty-fifth day of
16 October, two thousand twelve, relating to the Board of
17 Veterinary Medicine (schedule of fees, 26 CSR 6), is authorized.

§64-9-15. Board of Social Work.

1 (a) The legislative rule filed in the State Register on the
2 thirty-first day of August, two thousand twelve, authorized under
3 the authority of section six, article thirty, chapter thirty, of this
4 code, modified by the Board of Social Work to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on the twenty-third day of
7 January, two thousand thirteen, relating to the Board of Social
8 Work (fee schedule, 25 CSR 3), is authorized.

9 (b) The legislative rule filed in the State Register on the
10 thirty-first day of August, two thousand twelve, authorized under

11 the authority of section six, article thirty, chapter thirty, of this
12 code, modified by the Board of Social Work to meet the
13 objections of the Legislative Rule-Making Review Committee
14 and refiled in the State Register on the fifth day of February, two
15 thousand thirteen, relating to the Board of Social Work
16 (qualifications for for the profession social work, 25 CSR 1), is
17 authorized, with the following amendment:

18 On page three, subsection 3.1., by striking out “30-30-8” and
19 inserting in lieu thereof “30-30-1”;

20 On page three, subdivision 3.2.2, by striking out “3.2.2.” and
21 inserting in lieu thereof “3.2.1.”;

22 On page three, subdivision 3.2.3., by striking out “3.2.3.”
23 and inserting in lieu thereof “3.2.2.”;

24 On page three, subdivision 3.2.3., renumbered by this
25 amendment as 3.2.2., after the word “candidate” by inserting the
26 word “may”;

27 On page four, subsection 3.3., after the words “sociology,
28 psychology, counseling,” by inserting the words “criminal
29 justice,”;

30 On page four, subsection 3.3., after the words “qualified
31 supervision and employment” by inserting the words “critical
32 social work workforce shortage”;

33 On page four, subdivision 3.3.1., by striking out all of
34 paragraph (b) and inserting in lieu thereof a new paragraph,
35 designated paragraph (b), to read as follows:

36 “(b) Documentation showing the applicant has met the
37 requirements set forth in W.Va. Code §30-30-16.”;

38 On page four, subdivision 3.3.2., after the words “applicant
39 must submit” by striking out the remainder of the subdivision

40 and inserting in lieu thereof the words “a provisional license
41 agreement contract on a form provided by the board. Along with
42 the contract, the applicant must submit evidence of full time
43 social work employment under a provisional license
44 supervisor.”;

45 On page four, subdivision 3.3.4., after the words “license
46 period.” by striking out the remainder of the subsection and
47 inserting in lieu thereof the words “Successful completion means
48 receiving a passing grade.”;

49 On page four, by striking out all of paragraph 3.3.4.(a);

50 On page five, by striking out all of paragraph 3.3.4.(b);

51 On page five, by striking out all of paragraph 3.3.4.(d);

52 And relettering the remaining paragraphs accordingly;

53 On page six, paragraph 3.3.8.(a), after the words “made prior
54 to” by striking out the remainder of the paragraph and inserting
55 in lieu thereof the words “submitting an application to employ a
56 provisional licensee; and”;

57 On page six, subdivision 3.3.9., at the beginning of the
58 subdivision, by striking out the words “An employer” and
59 inserting in lieu thereof the words “A provisional licensing
60 supervisor”;

61 On page six, subdivision 3.3.9., after the words “while under
62 the” by striking out the words “employment of the agency.” and
63 inserting in lieu thereof the words “supervision of the
64 supervisor.”;

65 On page six, paragraph 3.3.11.(e), by striking out the words
66 “The Provisional Supervisor shall not have” and inserting in lieu
67 thereof the word “Has not”;

68 On page six, at the end of paragraph 3.3.11.(e), by inserting
69 the word “and”;

70 On page seven, subdivision 3.3.6, by renumbering said
71 subdivision as subdivision 3.3.13;

72 On page seven, subsection 3.6, by renumbering said
73 subsection as subsection 3.4;

74 On page seven, subdivision 3.6., renumbered by this
75 amendment as 3.4., after the words “attempting the examination”
76 by striking out the words “an additional time” and inserting in
77 lieu thereof the word “thereafter”;

78 On page seven, subsection 3.8, by renumbering said
79 subsection as subsection 3.5;

80 On page seven, beginning with subsection 3.9, by striking
81 out said subsection 3.9 in its entirety, and striking out
82 subdivision 3.9.1, the first subdivision 3.9.2 and the second
83 subdivision 3.9.2, and inserting in lieu thereof the following:

84 “3.6. As set forth in W. Va. Code §30-30-8, a licensed
85 independent clinical social worker may apply social work theory,
86 methods, assessment, ethics and the professional use of self to
87 the diagnosis, treatment and prevention of psychological
88 dysfunction, disability or impairment, including emotional and
89 mental disorders and developmental disabilities.

90 3.6.1. To be approved by the board to serve as a clinical
91 supervisor, a West Virginia licensed independent clinical social
92 worker, or a licensed clinical social worker from another
93 jurisdiction, shall:

94 (a) Have completed no less than two years of clinical
95 practice since the initial issuance of the clinical license;

96 (b) Submit a clinical supervision contract which identifies
97 the clinical supervisor and the person being supervised, and sets

98 forth the respective duties of employment. A clinical supervisor
99 from another jurisdiction shall provide evidence of having a
100 current, valid clinical social work license in good standing; and

101 (c) Maintain records of supervision, initialed by both parties,
102 of each face-to-face session, for 100 hours, over the course of
103 two years of full time employment or 3,000 hours of part time
104 employment: *Provided*, That up to 30 of the 100 hours may be
105 conducted by electronic means, so long as confidentiality is
106 guaranteed and the communication is not open for view or
107 comment by other parties.”

108 (c) The legislative rule filed in the State Register on the
109 twenty-ninth day of January, two thousand thirteen, authorized
110 under the authority of section six, article thirty, chapter thirty, of
111 this code, relating to the Board of Social Work (applications, 25
112 CSR 4), is authorized, with the following amendment:

113 On page one, subsection 2.1., by striking out the words
114 “mail, fax or email.” and inserting in lieu thereof the words
115 “mail, by fax to 304-558-4189, or by email to
116 bswe2@suddenlink.net or amypolen@wvsocialworkboard.org.”

117 (d) The legislative rule filed in the State Register on the
118 twenty-ninth day of January, two thousand thirteen, authorized
119 under the authority of section six, article thirty, chapter thirty, of
120 this code, relating to the Board of Social Work (continuing
121 education for social workers and providers, 25 CSR 5), is
122 authorized, with the following amendment:

123 On page one, subdivision 3.1.1., after the words “at least” by
124 striking out the word “thirty”;

125 On page two, subdivision 3.1.1., after the words “may be
126 earned via” by striking out the word “technical” and inserting in
127 lieu thereof the word “electronic”;

128 On page two, subsection 3.2., after the words “licensee is
129 not” by inserting in lieu thereof the word “required”;

130 On page two, subdivision 3.3.1., after the words
131 “satisfactorily completing:” by inserting the words “individual
132 professional activities as follows:”;

133 On page two, subdivision 3.3.1., paragraph (b), at the end of
134 the paragraph, after the words “under contract” by striking out
135 the words “and professional meetings”;

136 On page two, subdivision 3.4.3., after the words “three (3)
137 years of time” by striking out the remainder of said subdivision
138 3.4.3. and inserting in lieu thereof the words “preceding the date
139 of renewal. Once the license is renewed, the Board may expunge
140 the records.”;

141 On page three, subdivision 3.7.2., at the beginning of the
142 subdivision, by striking out the words “The license” and
143 inserting in lieu thereof the words “A delinquent license”;

144 On page three, subsection 4.1., in the third sentence of the
145 subsection, after the words “programs under” by striking out the
146 word “it’s” and inserting in lieu thereof the word “its”;

147 On page four, subdivision 4.2.6., after the words “provisions
148 of the” by striking out the word “American’s” and inserting in
149 lieu thereof the word “Americans”;

150 On page five, subdivision 4.3.12., after the words
151 “provisions of the” by striking out the word “American’s” and
152 inserting in lieu thereof the word “Americans”; and

153 On page five, subdivision 4.4.2., in the second sentence of the
154 subdivision, after the words “conducted via” by striking out the
155 word “technical” and inserting in lieu thereof the word
156 “electronic”.

157 (e) The legislative rule filed in the State Register on the
158 twenty-ninth day of January, two thousand thirteen, authorized
159 under the authority of section six, article thirty, chapter thirty, of
160 this code, relating to the Board of Social Work (code of ethics,
161 25 CSR 7), is authorized.

**§64-9-16. Board of Examiners for Speech-Language Pathology and
Audiology.**

1 The legislative rule filed in the State Register on the twelfth
2 day of June, two thousand twelve, authorized under the authority
3 of section ten, article thirty-two, chapter thirty, of this code,
4 relating to the Board of Examiners for Speech-Language
5 Pathology and Audiology (licensure of speech-pathology and
6 audiology, 29 CSR 1), is authorized.

§64-9-17. Conservation Committee.

1 The legislative rule filed in the State Register on the twenty-
2 seventh day of August, two thousand twelve, authorized under
3 the authority of section four, article twenty-one-a, chapter
4 nineteen, of this code, modified by the Conservation Committee
5 to meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the seventeenth
7 day of December, two thousand twelve relating to the
8 Conservation Committee (operation of the West Virginia State
9 Conservation Committee and conservation districts, 63 CSR 1),
10 is authorized, with the following amendment:

11 One page one, section one, subsection 1.1, by striking out the
12 comma and the words "appointment and removal" and inserting
13 in lieu thereof the words "and appointment";and

14 On page three, section two, by striking out all of subsection
15 2.6.

CHAPTER 121

(Com. Sub. for S. B. 250 - By Senator Snyder)

[Passed April 13, 2013; in effect from passage.]

[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact article 10, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Commerce; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; repealing the Development Office legislative rule relating to the use of coalbed methane severance tax proceeds; authorizing the Broadband Deployment Council to promulgate a legislative rule relating to broadband deployment grants programs; authorizing the Board of Miner Training, Education and Certification to promulgate a legislative rule relating to the standards for certification of coal mine electricians; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special motorboating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to defining the terms used in all hunting and trapping rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to prohibitions

when hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to deer hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to general trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special waterfowl hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special fishing; authorizing the Division of Natural Resources to promulgate a legislative rule relating to falconry; authorizing the Division of Labor to promulgate a legislative rule relating to bedding and upholstered furniture; authorizing the Division of Labor to promulgate a legislative rule relating to the Amusement Rides and Amusement Attractions Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to the supervision of elevator mechanics and apprentices; authorizing the Division of Labor to promulgate a legislative rule relating to the Crane Operator Certification Act; and authorizing the Division of Labor to promulgate a legislative rule relating to the Crane Operator Certification Act – practical examination.

Be it enacted by the Legislature of West Virginia:

That article 10, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. AUTHORIZATION FOR BUREAU OF
COMMERCE TO PROMULGATE
LEGISLATIVE RULES.**

§64-10-1. Development Office.

1 The legislative rule filed in the Office of the Secretary of
2 State, authorized under the prior enactment of section twenty-a,
3 article thirteen-a, chapter eleven of this code, relating to the
4 Development Office (use of coalbed methane severance tax
5 proceeds, 145 CSR 13), is repealed.

§64-10-2. Broadband Deployment Council.

1 The legislative rule filed in the State Register on August 10,
2 2012, authorized under the authority of section four, article
3 fifteen-c, chapter thirty-one of this code, modified by the
4 Broadband Deployment Council to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in the
6 State Register on January 22, 2013, relating to the Broadband
7 Deployment Council (broadband deployment grants programs,
8 208 CSR 1), is authorized.

§64-10-3. Board of Miners Training, Education and Certification.

1 The legislative rule filed in the State Register on August 22,
2 2012, authorized under the authority of section six, article seven,
3 chapter twenty-two-a of this code, modified by the Board of
4 Miners Training, Education and Certification to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on December 17, 2012, relating
7 to the Board of Miners Training, Education and Certification
8 (standards for certification of coal mine electricians, 48 CSR 7),
9 is authorized.

§64-10-4. Division of Natural Resources.

1 (a) The legislative rule filed in the State Register on August
2 31, 2012, authorized under the authority of section seven, article
3 one, chapter twenty of this code, relating to the Division of
4 Natural Resources (special boating, 58 CSR 26), is authorized.

5 (b) The legislative rule filed in the State Register on August
6 31, 2012, authorized under the authority of section twenty-three,
7 article seven, chapter twenty of this code, modified by the
8 Division of Natural Resources to meet the objections of the
9 Legislative Rule-Making Review Committee and refiled in the
10 State Register on October 18, 2012, relating to the Division of

11 Natural Resources (special motorboating, 58 CSR 27), is
12 authorized.

13 (c) The legislative rule filed in the State Register on August
14 31, 2012, authorized under the authority of section seven, article
15 one, chapter twenty of this code, relating to the Division of
16 Natural Resources (defining the terms used in all hunting and
17 trapping rules, 58 CSR 46), is authorized.

18 (d) The legislative rule filed in the State Register on July 19,
19 2012, authorized under the authority of section seven, article
20 one, chapter twenty of this code, relating to the Division of
21 Natural Resources (prohibitions when hunting and trapping, 58
22 CSR 47), is authorized.

23 (e) The legislative rule filed in the State Register on August
24 31, 2012, authorized under the authority of section seven, article
25 one, chapter twenty of this code, modified by the Division of
26 Natural Resources to meet the objections of the Legislative Rule-
27 Making Review Committee and refiled in the State Register on
28 October 18, 2012, relating to the Division of Natural Resources
29 (deer hunting, 58 CSR 50), is authorized.

30 (f) The legislative rule filed in the State Register on August
31 31, 2012, authorized under the authority of section seven, article
32 one, chapter twenty of this code, relating to the Division of
33 Natural Resources (general trapping, 58 CSR 53), is authorized.

34 (g) The legislative rule filed in the State Register on August
35 31, 2012, authorized under the authority of section seven, article
36 one, chapter twenty of this code, relating to the Division of
37 Natural Resources (special waterfowl hunting, 58 CSR 58), is
38 authorized.

39 (h) The legislative rule filed in the State Register on August
40 31, 2012, authorized under the authority of section seven, article

41 one, chapter twenty of this code, relating to the Division of
42 Natural Resources (special fishing, 58 CSR 61), is authorized.

43 (i) The legislative rule filed in the State Register on August
44 31, 2012, authorized under the authority of section seven, article
45 one, chapter twenty of this code, modified by the Division of
46 Natural Resources to meet the objections of the Legislative Rule-
47 Making Review Committee and refiled in the State Register on
48 October 31, 2012, relating to the Division of Natural Resources
49 (falconry, 58 CSR 65), is authorized with the following
50 amendments:

51 On page one, subsection 2.8., after the word “Falconiformes”
52 by inserting a comma and the words “the Order
53 Accipitriformes”;

54 On page one, after subsection 2.8., by inserting a new
55 subsection 2.9. to read as follows:

56 “2.9. “Passage” means a first-year raptor that is no longer
57 dependent upon parental care.”;

58 On page three, by striking out all of subsection 4.5. and
59 inserting in lieu thereof a new subsection 4.5. to read as follows:

60 “4.5. A permittee may use a falconry to take any bird species
61 for which there is a depredation order in place in 50 CFR at any
62 time in accordance with the conditions of the applicable
63 depredation order. The permittee may not receive any
64 compensation for depredation activities.”;

65 On page four, subdivision 5.3.e., after the word
66 “Falconiform” by inserting a comma and the word
67 “Accipitriform”;

68 On page six, subdivision 7.2.a., by striking out the word
69 “Alymeri” and inserting in lieu thereof the word “Aylmeri”;

70 On page eight, by striking out all of subsection 10.1. and
71 inserting in lieu thereof a new subsection 10.1. to read as
72 follows:

73 “10.1. A raptor taken, possessed, transported or used for
74 falconry purposes shall be marked with; a seamless, numbered
75 band issued by the Division for captive-bred birds or a U. S. Fish
76 and Wildlife Service permanent, non-reusable numbered band
77 issued by the Division for birds originating from the wild. An
78 ISO (International Organization for Standardization)-compliant
79 (134.2 kHz) microchip may be implanted in addition to the
80 band.”;

81 On page eight, by striking out all of subsection 10.3. and
82 inserting in lieu thereof a new subsection 10.3. to read as
83 follows:

84 “10.3. A permittee must report the loss or removal of any
85 band within five (5) days by filing a Federal form 3-186A either
86 electronically or in paper form. Lost bands must be replaced by
87 a permanent, nonreusable numbered band supplied by the
88 division. Upon remarking the raptor, the permittee shall
89 immediately complete and submit a Federal form 3-186A either
90 electronically or on paper reporting the new band.”;

91 On page nine, by striking out all of subsection 10.6. and
92 inserting in lieu thereof a new subsection 10.6. to read as
93 follows:

94 “10.6. A permittee shall remove and surrender to the division
95 any markers from an intentionally released raptor which is
96 indigenous to the state. A standard Federal band may be attached
97 to the birds at the discretion of the division prior to release.”;

98 On page nine, subsection 11.1., by striking out the words
99 “both the division and the U. S. Fish and Wildlife Service

100 Regional Law-Enforcement office” and inserting in lieu thereof
101 the words “the division”;

102 And,

103 On page nine, by striking out all of subsection 11.3. and
104 inserting in lieu thereof a new subsection 11.3. to read as
105 follows:

106 “11.3. Resident General or Master Falconers may take from
107 the wild any species of Falconiform, Accipitriform or Strigiform
108 in West Virginia except: eagles; peregrine falcon (*Falco*
109 *peregrines*); Northern harrier (*Circus cyaneus*); northern
110 goshawk (*Accipiter gentilis*); American rough-legged hawk
111 (*Buteo lagopus*); barn owl (*Tyto alba*); long-eared owl (*Asio*
112 *otus*); short-eared owl (*Asio flammeus*); saw-whet owl (*Aegolius*
113 *acadicus*); merlin (*Falco columbaris*) eyases; and sharp-shinned
114 hawk (*Accipiter straitus*) eyases.”

§64-10-5. Division of Labor.

1 (a) The legislative rule filed in the State Register on August
2 31, 2012, authorized under the authority of section fifteen, article
3 one-a, chapter forty-seven of this code, modified by the Division
4 of Labor to meet the objections of the Legislative Rule-Making
5 Review Committee and refiled in the State Register on
6 December 21, 2012, relating to the Division of Labor (bedding
7 and upholstered furniture, 42 CSR 12), is authorized with the
8 following amendments:

9 On page two, following subsection 3.6, by striking
10 subsection 3.7 and renumbering the remaining subsections;

11 On page two, subsection 3.9, line two, following the word
12 “manufacturing” and the comma, by striking the word
13 “importing” and the comma;

14 On page three, subsection 5.1, line one, following the word
15 “manufacturing” and the comma, by striking the word
16 “importing” and the comma;

17 On page three, subsection 5.1, line three, following the word
18 “manufacturer” and the comma, by striking the word “importer”
19 and the comma;

20 On page three, subsection 6.1, line one, following the word
21 “manufacturer” and the comma, by striking the word “importer”
22 and the comma;

23 On page three, subsection 6.2, line one, following the word
24 “manufacturer”, by striking the words “or importer”;

25 On page five, subsection 9.3, line one, following the word
26 “manufacturer” and the comma, by striking the word “importer”
27 and the comma;

28 On page five, subdivision 10.1.1, following the word
29 “manufacturer”, by striking the words “or importer”;

30 On page ten, appendix C, line sixteen, by striking out the
31 misspelled word “ADRESS” and inserting the in lieu thereof, the
32 word “ADDRESS”;

33 On page eleven, appendix D, line twenty, by striking out the
34 misspelled word “ADRESS” and inserting the in lieu thereof, the
35 word “ADDRESS”;

36 On page fourteen, appendix G, line fourteen, by striking out
37 the misspelled word “ADRESS” and inserting the in lieu thereof,
38 the word “ADDRESS”;

39 And,

40 On page fifteen, appendix H, line thirteen, by striking out the
41 misspelled word “ADRESS” and inserting the in lieu thereof, the
42 word “ADDRESS”;

43 (b) The legislative rule filed in the State Register on August
44 31, 2012, authorized under the authority of section three, article
45 ten, chapter twenty-one of this code, modified by the Division of
46 Labor to meet the objections of the Legislative Rule-Making
47 Review Committee and refiled in the State Register on
48 December 21, 2012, relating to the Division of Labor
49 (Amusement Rides and Amusement Attractions Safety Act, 42
50 CSR 17), is authorized with the following amendments:

51 On pages three and four, by re-designating subdivisions
52 4.1.1., 4.1.2., 4.1.3., 4.1.4., 4.1.5., 4.1.6., 4.1.7., 4.1.8., 4.1.9.,
53 4.1.10. and 4.1.11., as 4.1.a., 4.1.b., 4.1.c., 4.1.d., 4.1.e., 4.1.f.,
54 4.1.g., 4.1.h., 4.1.i., 4.1.j. and 4.1.k.;

55 On page seven, subdivision 9.2.b., line two, after the word
56 “has”, by striking out the word “of”;

57 On page eight, subdivision 10.2.b., line two, after the word
58 “has”, by striking out the word “of”;

59 On page eleven, subsection 17.4, line two, following the
60 words “report of the”, by inserting the word “serious”;

61 On page eleven, subsection 17.5, line one, following the
62 words “document the”, by striking the word “accident” and
63 inserting in lieu thereof the words “serious injury or fatality”;

64 On page eleven, subsection 18.1, line two, following the
65 words “required by”, by striking the words “this section of the
66 rule” and inserting in lieu thereof the words “sections 15 or 17
67 of this rule”;

68 On page eleven, subsection 18.1, line three, following the
69 word “cessation” and the comma, by striking the words
70 “imminent danger notification” and the comma;

71 On page twelve, subsection 19.4, line three, following the
72 word "operation", by striking the words "is prohibited" and
73 inserting a colon;

74 On page twelve, by re-designating subdivisions 19.4.1 and
75 19.4.2 as 19.4.a. and 19.4.b.;

76 And,

77 On page twelve, by re-designating paragraphs 19.4.2.1.,
78 19.4.2.2., 19.4.2.3., 19.4.2.4., 19.4.2.5., 19.4.2.6. as 19.4.b.1.,
79 19.4.b.2., 19.4.b.3., 19.4.b.4., 19.4.b.5., 19.4.b.6.

80 (c) The legislative rule filed in the State Register on August
81 31, 2012, authorized under the authority of section eleven, article
82 three-c, chapter twenty-one of this code, modified by the
83 Division of Labor to meet the objections of the Legislative Rule-
84 Making Review Committee and refiled in the State Register on
85 December 21, 2012, relating to the Division of Labor
86 (supervision of elevator mechanics and apprentices, 42 CSR
87 21A), is authorized, with the following amendments:

88 On page two, subsection 5.1., by un-striking the word "may"
89 and striking out the word "shall";

90 On page two, subsection 5.2., by un-striking the word "may"
91 and striking out the word "shall";

92 And,

93 On page six, subsection 9.2, line two, after the word "with",
94 by striking out the word "the".

95 (d) The legislative rule filed in the State Register on August
96 31, 2012, authorized under the authority of section three, article
97 three-d, chapter twenty-one of this code, modified by the
98 Division of Labor to meet the objections of the Legislative Rule-

99 Making Review Committee and refiled in the State Register on
100 December 21, 2012, relating to the Division of Labor (Crane
101 Operator Certification Act, 42 CSR 24), is authorized with the
102 following amendment:

103 On page two, subsection 3.4, line four, following the word
104 “November”, by striking “10” and inserting in lieu thereof “14”.

105 (e) The legislative rule filed in the State Register on August
106 21, 2012, authorized under the authority of section three, article
107 three-d, chapter twenty-one of this code, relating to the Division
108 of Labor (Crane Operator Certification Act - practical
109 examination, 42 CSR 25), is authorized with the following
110 amendments:

111 On page two, subsection 3.4, line five, following the word
112 “November”, by striking “10” and inserting in lieu thereof “14”;

113 And,

114 On page three, line fifteen, after the stricken subdivision
115 designation 4.5.d., by inserting the subdivision designation
116 4.4.d.”

CHAPTER 122

**(H. B. 3013 - By Mr. Speaker (Mr. Thompson), Boggs,
Swartzmiller, Caputo, Miley, M. Poling, White,
Perdue, Morgan, Moye and D. Poling)**

[Passed April 2, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 10, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §4-2B-1, relating to

authorizing the establishment of job creation work groups to obtain information to assist the Legislature's efforts to take effective action to increase and attract jobs in West Virginia.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §4-2B-1, to read as follows:

ARTICLE 2B. WORK GROUPS.

§4-2B-1. Job creation work groups.

1 (a)(1) The Legislature finds that an array of economic
2 development initiatives have been taken by the Legislature, the
3 Governor and various agencies of the Executive to promote the
4 growth of job opportunities for residents of the state, including,
5 but not limited to:

6 (A) An extensive reduction of business tax burdens,
7 workers' compensation reform, and significant investment in
8 university research;

9 (B) Providing new and expanding businesses with technical
10 and financial assistance to train, retrain and upgrade the skills of
11 their employees;

12 (C) Providing the curricula of an expanding Community and
13 Technical College System that is highly responsive to business
14 and workforce needs; and

15 (D) Broad based nationwide and global marketing of the
16 advantages of West Virginia as a place to do business, to work
17 and to live.

18 (2) These efforts are promoting a positive business climate
19 and continued business growth in the state. The Legislature

20 finds, however, that more can be done. The Legislature expects
21 to continuously examine and consider legislative proposals for
22 further actions that can be taken to increase jobs available in this
23 state by encouraging the expansion of existing industries and
24 business, both large and small, in this state, and by attracting to
25 this state new industries and businesses that will complement the
26 state's ongoing efforts to compete in the national and global
27 economies. The Legislature further finds that it can promote the
28 effectiveness of its consideration of these proposals as well as
29 provide a source of other ideas for the same by authorizing the
30 formation of job creation work groups to gather information in
31 person at locations within and outside the state in order to
32 observe first hand the best practices for job creation developed
33 elsewhere.

34 (b) The President of the Senate may establish one or more
35 Senate job creation work groups, composed of one or more
36 members of the Senate. The Speaker of the House of Delegates
37 may establish one or more House of Delegates job creation work
38 groups, composed of one or more members of the House of
39 Delegates.

40 (c) Each job creation work group shall conduct its activities
41 under the direction of the appointing presiding officer,
42 independently or in cooperation with the Department of
43 Commerce, the West Virginia Development Office, or other
44 executive office or agency of the state. The work group shall
45 conduct meetings and visitations as it is directed by the
46 appointing presiding officer for the purposes of obtaining
47 information available to assist the Legislature's efforts to take
48 effective action to increase and attract jobs in West Virginia. The
49 primary purpose of a job creation workgroup is to become a
50 resource for other members of its respective house of the
51 Legislature. The work group shall also meet with existing
52 businesses and organizations to further develop resources
53 currently available to expand upon and grow job opportunities

54 within the state. Each member of a job creation work group may
55 make proposals or recommendations on this subject as an
56 individual member of the Legislature. The work group exists
57 until terminated by the appointing presiding officer.

58 (d) The expenses of a job creation work group shall be paid
59 from the funds of the respective house in which it is established.
60 The members of the work group may receive no compensation
61 for their services other than actual expenses incurred in the
62 discharge of their duties as members of work group, subject to
63 the limitations provided for the reimbursement of travel and
64 other expenses incurred in the performance of duties as a
65 member of the Legislature under article two-a of this chapter.

66 (e) The provisions of this section expire and are of no force
67 and effect after December 31, 2014.

CHAPTER 123

(Com. Sub. for S. B. 544 - By Senators Snyder and Stollings)

[Passed April 11, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §4-10-8 of the Code of West Virginia, 1931, as amended, relating to the schedule of departments for agency review.

Be it enacted by the Legislature of West Virginia:

That §4-10-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. PERFORMANCE REVIEW ACT.

§4-10-8. Schedule of departments for agency review.

1 (a) Each department shall make a presentation, pursuant to
2 the provisions of this article, to the joint standing committee and
3 the committee during the first interim meeting after the regular
4 session of the year in which the department is to be reviewed
5 pursuant to the schedule set forth in subsection (b) of this
6 section.

7 (b) An agency review shall be performed on one or more
8 agencies under the purview of each department at least once
9 every seven years, as follows:

10 (1) 2013, the Department of Transportation;

11 (2) 2014, the Department of Administration;

12 (3) 2015, the Department of Education, including the Higher
13 Education Policy Commission and the West Virginia Council for
14 Community and Technical College Education;

15 (4) 2016, the Department of Veterans' Assistance and the
16 Department of Education and the Arts;

17 (5) 2017, the Department of Revenue and the Department of
18 Commerce;

19 (6) 2018, the Department of Environmental Protection and
20 the Department of Military Affairs and Public Safety;

21 (7) 2019, the Department of Health and Human Resources,
22 including the Bureau of Senior Services; and

23 (8) 2020, the Department of Transportation.

CHAPTER 124

**(Com. Sub. for H. B. 2399 - By Delegates D. Poling,
Anderson, Manypenny, Guthrie, Ireland,
Ellem and Swartzmiller)**

[Passed April 12, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to repeal §19-18-4, §19-18-5, §19-18-6, §19-18-7, §19-18-8, §19-18-9, §19-18-10, §19-18-11 and §19-18-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §19-1C-4 of said code; and to amend and reenact §19-18-1, §19-18-2 and §19-18-3 of said code, all relating generally to livestock; permitting the Livestock Care Standards Board to create procedures to address the inhumane treatment of livestock; prohibiting livestock from trespassing; clarifying damages that may be recovered; permitting containment of livestock; requiring notification of owner of trespassing livestock; requiring containment costs be negotiated and recovered in court; permitting the sheriff to take possession of unclaimed livestock; permitting unclaimed livestock be sold at auction; setting forth the distribution of auction proceeds; and establishing misdemeanor penalties.

Be it enacted by the Legislature of West Virginia:

That §19-18-4, §19-18-5, §19-18-6, §19-18-7, §19-18-8, §19-18-9, §19-18-10, §19-18-11 and §19-18-12 of the Code of West Virginia, 1931, as amended, be repealed; that §19-1C-4 of said code be amended and reenacted; and that §19-18-1, §19-18-2 and §19-18-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 1C. CARE OF LIVESTOCK.**§19-1C-4. Powers and duties of the board.**

1 (a) The board has the following powers and duties to:

2 (1) Establish standards governing the care and well-being of
3 livestock;

4 (2) Maintain food safety;

5 (3) Encourage locally grown and raised food; and

6 (4) Protect West Virginia farms and families.

7 (b) The board is also authorized to establish standards by
8 legislative rule, pursuant to the provisions of article three,
9 chapter twenty-nine-a of this code, governing the care and
10 well-being of livestock in this state, including:

11 (1) The agricultural best management practices for the care
12 and well-being of livestock and poultry in this state;

13 (2) Procedures for addressing complaints regarding the
14 inhumane treatment of livestock and coordinating efforts with
15 county humane officers;

16 (3) Biosecurity, disease prevention, animal morbidity and
17 mortality data;

18 (4) Food safety practices; and

19 (5) The protection of local, affordable food supplies for
20 consumers.

21 (c) The Department of Agriculture shall administer and
22 enforce the standards established by the board that are approved
23 by the Legislature.

ARTICLE 18. GENERAL LIVESTOCK TRESPASS LAW.**§19-18-1. Livestock trespassing on property of another; damages for injuries to person or property; notice to livestock owner; containment of livestock; costs for containment.**

1 (a) If livestock enters the property of a landowner without
2 that landowner's consent, the owner of the livestock is liable for
3 damages for personal injury or property damage in a civil action
4 in magistrate or circuit court.

5 (b) The landowner must attempt to contact the owner of the
6 trespassing livestock within forty-eight hours of the trespass. If
7 the owner cannot be contacted within forty-eight hours, the
8 landowner shall notify the county sheriff.

9 (c) The landowner may contain the trespassing livestock on
10 his or her property, but is not required to do so. If the landowner
11 is able to contact the owner of the trespassing livestock pursuant
12 to subsection (a) of this section, he or she shall also inform the
13 owner of the costs of containment.

14 (d) The owner of the trespassing livestock and the landowner
15 shall attempt to mutually agree upon a fair cost for any
16 containment. A fair cost for containment is an amount which
17 would be allowed for the sheriff for containing similar livestock.
18 If the negotiation fails, or if the landowner is not otherwise
19 reimbursed for the costs for containment, the landowner may
20 seek monetary damages in a civil action for these costs.

§19-18-2. Unclaimed livestock; containment by sheriff; sheriff's sale at public auction.

1 (a) If the owner of trespassing livestock cannot be
2 determined, or if the trespassing livestock has not been

3 recovered within ten days of notifying the owner, the county
4 sheriff shall take possession of the trespassing livestock.

5 (b) The county sheriff may return the livestock to its owner
6 and seek reimbursement for containment costs. If attempts to
7 return the livestock to the owner fail, the sheriff may, after
8 publishing notice as a Class I legal advertisement, sell the
9 livestock to the highest bidder at a public livestock auction.

10 (c) The proceeds of the livestock sale shall be distributed in
11 the following order:

12 (1) Costs incident to the sale;

13 (2) Costs of containment incurred by the sheriff and the
14 landowner;

15 (3) Any remaining amount to the owner of the trespassing
16 livestock; and

17 (4) If the owner is unknown or does not claim the amount
18 remaining within ninety days, that amount shall be deposited
19 into the county treasury.

§19-18-3. Criminal penalties for trespassing livestock.

1 (a) While livestock may escape enclosures due to accident
2 or unforeseen circumstances, it is unlawful for the owner of
3 livestock to negligently permit livestock to run at large and
4 trespass on the property of other landowners.

5 (b) If livestock injures a person or destroys the property of
6 another person while negligently trespassing, the owner of the
7 livestock shall be given an oral or written warning for the first
8 offense. For a second offense within six months of the first, the
9 owner is guilty of a misdemeanor and, upon conviction thereof,

10 shall be fined not less than \$50 nor more than \$100. For a third
11 or subsequent offense within six months of the second or
12 subsequent offense, the owner is guilty of a misdemeanor and,
13 upon conviction thereof, shall be fined not less than \$100 nor
14 more than \$1,000.

CHAPTER 125

(Com. Sub. for S. B. 146 - By Senators Unger and Beach)

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 1, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §50-3-2c, relating to requiring the Tax Commissioner to withhold unpaid costs, fines, fees, forfeitures, restitution, penalties and other fees imposed on a defendant in a criminal action in magistrate court, or imposed in circuit court in a criminal action on appeal from magistrate court, from the income tax refund of the defendant upon notification from the clerk of the appropriate court; requiring clerk to give notification to Tax Commissioner if amounts are unpaid within one year of judgment; providing a process for deducting, distributing and allocating those unpaid amounts; creating the Magistrate Fines and Fees Collection Fund; permitting the Tax Commissioner to charge an administrative fee; and providing rule-making authority.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §50-3-2c, to read as follows:

ARTICLE 3. COSTS, FINES AND RECORDS.**§50-3-2c. Withholding from personal income tax refunds for unpaid fines and costs in magistrate criminal actions, in magistrate criminal appeals to circuit court and for failure to appear in court.**

1 (a) If costs, fines, fees, forfeitures, restitution or penalties
2 imposed by the magistrate court upon conviction of a person for
3 a criminal offense as defined by this code, imposed by the circuit
4 court upon judgment on an appeal to circuit court of that
5 conviction, or imposed by either court for failure to appear are
6 not paid in full within one year of the judgment, the magistrate
7 court clerk or, upon a judgment rendered on appeal, the circuit
8 clerk shall notify the Tax Commissioner that the defendant has
9 failed to pay the costs, fines, forfeitures or penalties assessed by
10 the court. The notice provided by the magistrate clerk or the
11 circuit clerk to the Tax Commissioner must include the
12 defendant's Social Security number. The Tax Commissioner, or
13 his or her designee, shall withhold from any personal income tax
14 refund due and owing to a defendant the costs, fines, fees,
15 forfeitures, restitution or penalties due, the Tax Commissioner's
16 administration fee for the withholding and any and all fees or
17 other amounts that the magistrate court and the circuit court
18 would have collected had the defendant appeared: *Provided,*
19 That no withholding shall be made under this section if there is
20 an unsatisfied withholding request made pursuant to section two-
21 b, article ten, chapter eight of this code. The Tax
22 Commissioner's administration fee shall not exceed \$25, unless
23 this maximum amount is increased by legislative rule
24 promulgated in accordance with article three, chapter twenty-
25 nine-a of this code. The administrative fees deducted shall be
26 deposited in the special revolving fund hereby created in the
27 State Treasury, which shall be designated as the Magistrate Fines
28 and Fees Collection Fund, and the Tax Commissioner shall make

29 such expenditures from the fund as he or she deems appropriate
30 for the administration of this subsection.

31 (b)(1) After deduction of the Tax Commissioner's
32 administration fee, the Tax Commissioner shall remit all
33 remaining amounts withheld pursuant to this section to the clerk
34 of the court that notified the Tax Commissioner of the failure to
35 pay under subsection (a) of this section.

36 (2) From the amounts received from the Tax Commissioner,
37 the circuit clerk shall distribute the portion thereof that is
38 attributable to costs, fines, fees, forfeitures, restitution or
39 penalties owed to magistrate court to the magistrate clerk and
40 distribute the remainder that is attributable to costs, fines, fees,
41 forfeitures, restitution or penalties owed to circuit court to the
42 appropriate fund or payee, as applicable and listed in section
43 twenty-eight-a, article one, chapter fifty-nine of this code and as
44 otherwise required by law.

45 (3) From the amounts received from the Tax Commissioner,
46 or from the circuit clerk under subdivision (2) of this subsection,
47 the magistrate clerk shall distribute applicable costs, fines, fees,
48 forfeitures, restitution or penalties owed to the appropriate fund
49 or payee, as applicable and listed in subsection (g), section two-a
50 of this article and as otherwise required by law.

51 (4) After the costs, fines, fees, forfeitures, restitution or
52 penalties are withheld, the Tax Commissioner shall refund any
53 remaining balance due the defendant.

54 (5) If the refund is not sufficient to cover all the costs, fines,
55 fees, forfeitures, restitution or penalties to be withheld pursuant
56 to this section, the Tax Commissioner's administration fee shall
57 be retained by the Tax Commissioner and the remaining money
58 withheld shall be remitted by the Tax Commissioner to the

59 appropriate clerk. The clerk shall then allocate the money so
60 remitted on a pro rata basis as provided in the applicable
61 provisions of subdivisions (2) or (3) of this subsection.

62 (c) In the event the costs, fines, fees, forfeitures, restitution
63 or penalties exceed the defendant's income tax refund, the Tax
64 Commissioner shall withhold the remaining balance in
65 subsequent years until such time as the costs, fines, fees,
66 forfeitures, restitution or penalties owed are paid in full. The Tax
67 Commissioner shall remit the moneys that he or she collects to
68 the appropriate clerk no later than July 1 of each year. If the
69 circuit court or the magistrate court subsequently determines that
70 any costs, fines, fees, forfeitures, restitution or penalties were
71 erroneously imposed, the clerk of the court shall promptly notify
72 the Tax Commissioner. If the amounts due are paid in full to the
73 court from a source other than the Tax Commissioner after the
74 clerk of the court has provided notice of the failure to pay to the
75 tax commissioner, the clerk of the court shall promptly notify the
76 Tax Commissioner of the payment. If the refunds have not been
77 withheld and remitted, the Tax Commissioner may not withhold
78 and remit payment to the appropriate court and shall so inform
79 the clerk of the court. If the refunds have already been withheld
80 and remitted to the court, the Tax Commissioner shall so inform
81 the clerk of the court. In either event, all refunds for erroneously
82 imposed costs, fines, forfeitures or penalties shall be made by the
83 appropriate court and not by the Tax Commissioner.

84 (d) *Rules.* — The Tax Commissioner may propose for
85 legislative approval such rules as may be useful or necessary to
86 carry out the purpose of this section and to implement the intent
87 of the Legislature. Rules shall be promulgated in accordance
88 with article three, chapter twenty-nine-a of this code.

CHAPTER 126

(Com. Sub. for S. B. 421 - By Senators Nohe, Boley,
Carmichael and Walters)

[Passed April 5, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 17, 2013.]

AN ACT to amend and reenact §61-7-11a of the Code of West Virginia, 1931, as amended, relating to providing an exemption for the official mascot of Parkersburg South High School, commonly known as the Patriot, which would allow the mascot to carry a musket on school grounds when the mascot is acting in his or her official capacity.

Be it enacted by the Legislature of West Virginia:

That §61-7-11a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and in offices of family law master.

- 1 (a) The Legislature hereby finds that the safety and welfare
- 2 of the citizens of this state are inextricably dependent upon
- 3 assurances of safety for children attending and persons employed
- 4 by schools in this state and for persons employed by the judicial
- 5 department of this state. It is for the purpose of providing
- 6 assurances of safety that subsections (b), (g) and (h) of this
- 7 section are enacted as a reasonable regulation of the manner in

8 which citizens may exercise the rights accorded to them pursuant
9 to section twenty-two, article three of the Constitution of the
10 State of West Virginia.

11 (b) (1) It is unlawful for a person to possess a firearm or
12 other deadly weapon on a school bus as defined in section one,
13 article one, chapter seventeen-a of this code, or in or on a public
14 or private primary or secondary education building, structure,
15 facility or grounds including a vocational education building,
16 structure, facility or grounds where secondary vocational
17 education programs are conducted or at a school-sponsored
18 function.

19 (2) This subsection does not apply to:

20 (A) A law-enforcement officer acting in his or her official
21 capacity;

22 (B) A person specifically authorized by the board of
23 education of the county or principal of the school where the
24 property is located to conduct programs with valid educational
25 purposes;

26 (C) A person who, as otherwise permitted by the provisions
27 of this article, possesses an unloaded firearm or deadly weapon
28 in a motor vehicle or leaves an unloaded firearm or deadly
29 weapon in a locked motor vehicle;

30 (D) Programs or raffles conducted with the approval of the
31 county board of education or school which include the display of
32 unloaded firearms;

33 (E) The official mascot of West Virginia University,
34 commonly known as the Mountaineer, acting in his or her
35 official capacity; or

36 (F) The official mascot of Parkersburg South High School,
37 commonly known as the Patriot, acting in his or her official
38 capacity.

39 (3) A person violating this subsection is guilty of a felony
40 and, upon conviction thereof, shall be imprisoned in a state
41 correctional facility for a definite term of years of not less than
42 two years nor more than ten years, or fined not more than
43 \$5,000, or both.

44 (c) It is the duty of the principal of each school subject to the
45 authority of the State Board of Education to report a violation of
46 subsection (b) of this section discovered by the principal to the
47 State Superintendent of Schools within seventy-two hours after
48 the violation occurs. The State Board of Education shall keep
49 and maintain these reports and may prescribe rules establishing
50 policy and procedures for the making and delivery of the reports
51 as required by this subsection. In addition, it is the duty of the
52 principal of each school subject to the authority of the State
53 Board of Education to report a violation of subsection (b) of this
54 section discovered by the principal to the appropriate local office
55 of the Division of Public Safety within seventy-two hours after
56 the violation occurs.

57 (d) In addition to the methods of disposition provided by
58 article five, chapter forty-nine of this code, a court which
59 adjudicates a person who is fourteen years of age or older as
60 delinquent for a violation of subsection (b) of this section may,
61 in its discretion, order the Division of Motor Vehicles to suspend
62 a driver's license or instruction permit issued to the person for a
63 period of time as the court considers appropriate, not to extend
64 beyond the person's nineteenth birthday. Where the person has
65 not been issued a driver's license or instruction permit by this
66 state, a court may order the Division of Motor Vehicles to deny
67 the person's application for a license or permit for a period of

68 time as the court considers appropriate, not to extend beyond the
69 person's nineteenth birthday. A suspension ordered by the court
70 pursuant to this subsection is effective upon the date of entry of
71 the order. Where the court orders the suspension of a driver's
72 license or instruction permit pursuant to this subsection, the
73 court shall confiscate any driver's license or instruction permit
74 in the adjudicated person's possession and forward to the
75 Division of Motor Vehicles.

76 (e) (1) If a person eighteen years of age or older is convicted
77 of violating subsection (b) of this section, and if the person does
78 not act to appeal the conviction within the time periods described
79 in subdivision (2) of this subsection, the person's license or
80 privilege to operate a motor vehicle in this state shall be revoked
81 in accordance with the provisions of this section.

82 (2) The clerk of the court in which the person is convicted as
83 described in subdivision (1) of this subsection shall forward to
84 the commissioner a transcript of the judgment of conviction. If
85 the conviction is the judgment of a magistrate court, the
86 magistrate court clerk shall forward the transcript when the
87 person convicted has not requested an appeal within twenty days
88 of the sentencing for the conviction. If the conviction is the
89 judgment of a circuit court, the circuit clerk shall forward a
90 transcript of the judgment of conviction when the person
91 convicted has not filed a notice of intent to file a petition for
92 appeal or writ of error within thirty days after the judgment was
93 entered.

94 (3) If, upon examination of the transcript of the judgment of
95 conviction, the commissioner determines that the person was
96 convicted as described in subdivision (1) of this subsection, the
97 commissioner shall make and enter an order revoking the
98 person's license or privilege to operate a motor vehicle in this
99 state for a period of one year or, in the event the person is a

100 student enrolled in a secondary school, for a period of one year
101 or until the person's twentieth birthday, whichever is the greater
102 period. The order shall contain the reasons for the revocation and
103 the revocation period. The order of suspension shall advise the
104 person that because of the receipt of the court's transcript, a
105 presumption exists that the person named in the order of
106 suspension is the same person named in the transcript. The
107 commissioner may grant an administrative hearing which
108 substantially complies with the requirements of the provisions of
109 section two, article five-a, chapter seventeen-c of this code upon
110 a preliminary showing that a possibility exists that the person
111 named in the notice of conviction is not the same person whose
112 license is being suspended. The request for hearing shall be
113 made within ten days after receipt of a copy of the order of
114 suspension. The sole purpose of this hearing is for the person
115 requesting the hearing to present evidence that he or she is not
116 the person named in the notice. If the commissioner grants an
117 administrative hearing, the commissioner shall stay the license
118 suspension pending the commissioner's order resulting from the
119 hearing.

120 (4) For the purposes of this subsection, a person is convicted
121 when such person enters a plea of guilty or is found guilty by a
122 court or jury.

123 (f) (1) It is unlawful for a parent, guardian or custodian of a
124 person less than eighteen years of age who knows that the person
125 is in violation of subsection (b) of this section or has reasonable
126 cause to believe that the person's violation of subsection (b) is
127 imminent, to fail to immediately report his or her knowledge or
128 belief to the appropriate school or law-enforcement officials.

129 (2) A person violating this subsection is guilty of a
130 misdemeanor and, upon conviction thereof, shall be fined not

131 more than \$1,000, or shall be confined in jail not more than one
132 year, or both.

133 (g) (1) It is unlawful for a person to possess a firearm or
134 other deadly weapon on the premises of a court of law, including
135 family courts.

136 (2) This subsection does not apply to:

137 (A) A law-enforcement officer acting in his or her official
138 capacity; and

139 (B) A person exempted from the provisions of this
140 subsection by order of record entered by a court with jurisdiction
141 over the premises or offices.

142 (3) A person violating this subsection is guilty of a
143 misdemeanor and, upon conviction thereof, shall be fined not
144 more than \$1,000, or shall be confined in jail not more than one
145 year, or both.

146 (h) (1) It is unlawful for a person to possess a firearm or
147 other deadly weapon on the premises of a court of law, including
148 family courts, with the intent to commit a crime.

149 (2) A person violating this subsection is guilty of a felony
150 and, upon conviction thereof, shall be imprisoned in a state
151 correctional facility for a definite term of years of not less than
152 two years nor more than ten years, or fined not more than
153 \$5,000, or both.

154 (i) Nothing in this section may be construed to be in conflict
155 with the provisions of federal law.

CHAPTER 127

(Com. Sub. for H. B. 2512 - By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)

[Passed April 12, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §9-5-11 of the Code of West Virginia, 1931, as amended, all relating to state Medicaid subrogation; establishing definitions; establishing recipient assignment of subrogation rights against third parties; excluding Medicare benefits from assignment; authorizing release of information; prioritizing the department's subrogation right; establishing notice requirements for third party claims, civil actions and settlements; permitting the department to enter appearance in an action against a third party; establishing penalties for failure to notify the department; requiring consent to settle; establishing procedures for agreed allocation of award or judgment proceeds from third parties; establishing procedures when allocation is disputed; establishing procedures for jury trial; establishing post-trial payment procedures; establishing allocation of attorneys fees; prohibiting certain class actions and multiple plaintiff actions; and authorizing authority to settle.

Be it enacted by the Legislature of West Virginia:

That §9-5-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-11. Definitions; Assignment of rights; right of subrogation by the Department for third-party liability; notice

requirement for claims and civil actions; notice requirement for settlement of third-party claim; penalty for failure to notify the department; provisions related to trial; attorneys fees; class actions and multiple plaintiff actions not authorized; and Secretary's authority to settle.

1 (a) *Definitions.*— As used in this section, unless the context
2 otherwise requires:

3 (1) “Bureau” means the Bureau for Medical Services.

4 (2) “Department” means the West Virginia Department of
5 Health and Human Resources, or its contracted designee.

6 (3) “Recipient” means a person who applies for and receives
7 assistance under the Medicaid Program.

8 (4) “Secretary” means the Secretary of the Department of
9 Health and Human Resources.

10 (5) “Third-party” means an individual or entity that is
11 alleged to be liable to pay all or part of the costs of a recipient’s
12 medical treatment and medical-related services for personal
13 injury, disease, illness or disability, as well as any entity
14 including, but not limited to, a business organization, health
15 service organization, insurer, or public or private agency acting
16 by or on behalf of the allegedly liable third-party.

17 (b) *Assignment of rights.*—

18 (1) Submission of an application to the department for
19 medical assistance is, as a matter of law, an assignment of the
20 right of the applicant or his or her legal representative to recover
21 from third parties past medical expenses paid for by the
22 Medicaid program.

23 (2) At the time an application for medical assistance is made,
24 the department shall include a statement along with the
25 application that explains that the applicant has assigned all of his
26 or her rights as provided in this section and the legal
27 implications of making this assignment.

28 (3) This assignment of rights does not extend to Medicare
29 benefits.

30 (4) This section does not prevent the recipient or his or her
31 legal representative from maintaining an action for injuries or
32 damages sustained by the recipient against any third-party and
33 from including, as part of the compensatory damages sought to
34 be recovered, the amounts of his or her past medical expenses.

35 (5) The department shall be legally subrogated to the rights
36 of the recipient against the third party.

37 (6) The department shall have a priority right to be paid first
38 out of any payments made to the recipient for past medical
39 expenses before the recipient can recover any of his or her own
40 costs for medical care.

41 (7) A recipient is considered to have authorized all
42 third-parties to release to the department information needed by
43 the department to secure or enforce its rights as assignee under
44 this chapter.

45 (c) *Notice requirement for claims and civil actions.*—

46 (1) A recipient's legal representative shall provide notice to
47 the department within 60 days of asserting a claim against a third
48 party. If the claim is asserted in a formal civil action, the
49 recipient's legal representative shall notify the department within
50 60 days of service of the complaint and summons upon the third
51 party by causing a copy of the summons and a copy of the
52 complaint to be served on the department as though it were
53 named a party defendant.

54 (2) If the recipient has no legal representative and the third
55 party knows or reasonably should know that a recipient has no
56 representation then the third party shall provide notice to the
57 department within sixty days of receipt of a claim or within
58 thirty days of receipt of information or documentation reflecting
59 the recipient is receiving Medicaid benefits, whichever is later
60 in time.

61 (3) In any civil action implicated by this section, the
62 department may file a notice of appearance and shall thereafter
63 have the right to file and receive pleadings, intervene and take
64 other action permitted by law.

65 (4) The department shall provide the recipient and the third
66 party, if the recipient is without legal representation, notice of
67 the amount of the purported subrogation lien within thirty days
68 of receipt of notice of the claim. The department shall provide
69 related supplements in a timely manner, but no later than fifteen
70 days after receipt of a request for same.

71 (d) *Notice of settlement requirement.*—

72 (1) A recipient or his or her representative shall notify the
73 department of a settlement with a third-party and retain in
74 escrow an amount equal to the amount of the subrogation lien
75 asserted by the department. The notification shall include the
76 amount of the settlement being allocated for past medical
77 expenses paid for by the Medicaid program. Within 30 days of
78 the receipt of any such notice, the department shall notify the
79 recipient of its consent or rejection of the proposed allocation. If
80 the department consents, the recipient or his or her legal
81 representation shall issue payment out of the settlement proceeds
82 in a manner directed by the secretary or his or her designee
83 within 30 days of consent to the proposed allocation.

84 (2) If the total amount of the settlement is less than the
85 department's subrogation lien, then the settling parties shall

86 obtain the department's consent to the settlement before
87 finalizing the settlement. The department shall advise the parties
88 within 30 days and provide a detailed itemization of all past
89 medical expenses paid by the department on behalf of the
90 recipient for which the department seeks reimbursement out of
91 the settlement proceeds.

92 (3) If the department rejects the proposed allocation, the
93 department shall seek a judicial determination within 30 days
94 and provide a detailed itemization of all past medical expenses
95 paid by the department on behalf of the recipient for which the
96 department seeks reimbursement out of the settlement proceeds.

97 (A) If judicial determination becomes necessary, the trial
98 court is required to hold an evidentiary hearing. The recipient
99 and the department shall be provided ample notice of the same
100 and be given just opportunity to present the necessary evidence,
101 including fact witness and expert witness testimony, to establish
102 the amount to which the department is entitled to be reimbursed
103 pursuant to this section.

104 (B) The department shall have the burden of proving by a
105 preponderance of the evidence that the allocation agreed to by
106 the parties was improper. For purposes of appeal, the trial court's
107 decision should be set forth in a detailed order containing the
108 requisite findings of fact and conclusions of law to support its
109 rulings.

110 (4) Any settlement by a recipient with one or more
111 third-parties which would otherwise fully resolve the recipient's
112 claim for an amount collectively not to exceed \$20,000 shall be
113 exempt from the provisions of this section.

114 (5) Nothing herein prevents a recipient from seeking judicial
115 intervention to resolve any dispute as to allocation prior to
116 effectuating a settlement with a third party.

117 (e) *Department failure to respond to notice of settlement.*—
118 If the department fails to appropriately respond to a notification
119 of settlement, the amount to which the department is entitled to
120 be paid from the settlement shall be limited to the amount of the
121 settlement the recipient has allocated toward past medical
122 expenses.

123 (f) *Penalty for failure to notify the department.*— A legal
124 representative acting on behalf of a recipient or third party that
125 fails to comply with the provisions of this section is liable to the
126 department for all reimbursement amounts the department would
127 otherwise have been entitled to collect pursuant to this section
128 but for the failure to comply. Under no circumstances may a pro
129 se recipient be penalized for failing to comply with the
130 provisions of this section.

131 (g) *Miscellaneous provisions relating to trial.*—

132 (1) Where an action implicated by this section is tried by a
133 jury, the jury may not be informed at any time as to the
134 subrogation lien of the department.

135 (2) Where an action implicated by this section is tried by
136 judge or jury, the trial judge shall, or in the instance of a jury
137 trial, require that the jury, identify precisely the amount of the
138 verdict awarded that represents past medical expenses.

139 (3) Upon the entry of judgment on the verdict, the court shall
140 direct that upon satisfaction of the judgment any damages
141 awarded for past medical expenses be withheld and paid directly
142 to the department, not to exceed the amount of past medical
143 expenses paid by the department on behalf of the recipient.

144 (h) *Attorneys' fees.*— Irrespective of whether an action or
145 claim is terminated by judgment or settlement without trial, from
146 the amount required to be paid to the department there shall be
147 deducted the reasonable costs and attorneys' fees attributable to

148 the amount in accordance with and in proportion to the fee
149 arrangement made between the recipient and his or her attorney
150 of record so that the department shall bear the pro-rata share of
151 the reasonable costs and attorneys' fees: *Provided*, That if there
152 is no recovery, the department shall under no circumstances be
153 liable for any costs or attorneys' fees expended in the matter.

154 (i) *Class actions and multiple plaintiff actions not*
155 *authorized.*— Nothing in this article shall authorize the
156 department to institute a class action or multiple plaintiff action
157 against any manufacturer, distributor or vendor of any product
158 to recover medical care expenditures paid for by the Medicaid
159 program.

160 (j) *Secretary's authority.* — The secretary or his or her
161 designee may compromise, settle and execute a release of any
162 claim relating to the department's right of subrogation, in whole
163 or in part.

CHAPTER 128

**(Com. Sub. for S. B. 481 - By Senators Palumbo,
Unger, Jenkins and Tucker)**

[Passed April 12, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §27-4-1 of the Code of West Virginia, 1931, as amended, relating to juvenile mental health, intellectual disability and addiction; permitting acceptance of a notarized application in lieu of in-person application for certain voluntary hospitalization; allowing use of article five, chapter twenty-seven of said code for juveniles in certain situations; requiring parents or

guardians to transport minors for voluntary hospitalization; creating exceptions to that requirement by affidavit to circuit court, mental hygiene commissioner or magistrate court; requiring transfer by county sheriff upon order of circuit court, mental hygiene commissioner or magistrate court; and requiring mental health facilities to make their application immediately accessible in certain situations.

Be it enacted by the Legislature of West Virginia:

That §27-4-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. VOLUNTARY HOSPITALIZATION.

§27-4-1. Authority to receive voluntary patients.

1 (a) The chief medical officer of a mental health facility,
2 subject to the availability of suitable accommodations and to the
3 rules promulgated by the board of health, shall admit for
4 diagnosis, care and treatment any individual:

5 (1) Eighteen years of age or older who is mentally ill,
6 intellectually disabled or addicted or who has manifested
7 symptoms of mental illness, intellectual disability or addiction
8 and who makes application for hospitalization; or

9 (2) Under eighteen years of age who is mentally ill,
10 intellectually disabled or addicted or who has manifested
11 symptoms of mental illness, intellectual disability or addiction
12 and where there is an application for hospitalization, either made
13 in person at the time of admission or by a notarized written
14 application submitted by facsimile, e-mail or in person prior to,
15 or at the time of, admission, on his or her behalf as follows:

16 (A) By the parents of such person;

17 (B) If only one parent is living, then by such parent;

18 (C) If the parents are living separate and apart, then by the
19 parent who has the custody of such person; or

20 (D) If there is a guardian who has legal custody of such
21 person, then by such guardian.

22 (E) If the subject person under eighteen years of age is an
23 emancipated minor, the admission of that person as a voluntary
24 patient shall be conditioned upon the consent of the patient.

25 (F) If the application for the subject person under eighteen
26 years of age does not satisfy one of paragraphs (A) through (E)
27 of this subdivision, the provisions of article five of this chapter
28 shall be followed with respect to any hospitalization.

29 (b) For any application for hospitalization made pursuant to
30 subdivision (2) of subsection (a) of this section, the person
31 making the application shall transport the minor to the mental
32 health facility, except as provided in this subsection. If the minor
33 is violent or combative or the parent or guardian faces other
34 circumstances that make the parent or guardian unable to
35 transport the minor to the mental health facility, the parent or
36 guardian may file an affidavit with the circuit court of the county
37 in which the minor resides or of the county in which the minor
38 may be found. The parent or guardian shall give information and
39 state facts in the affidavit as may be required by the form
40 provided for this purpose by the Supreme Court of Appeals.
41 Upon ex parte review of the affidavit, a mental hygiene
42 commissioner or circuit court judge, or when none are available
43 the magistrate designated pursuant to article five of this chapter,
44 may determine that the parent or guardian is unable to transport
45 the minor for voluntary hospitalization and, if such a
46 determination is made, shall enter an order requiring the sheriff
47 of that county to transport the minor to the mental health facility.

48 (c) No person under eighteen years of age may be admitted
49 under this section to any state hospital unless the person has first

50 been reviewed and evaluated by a local mental health facility
51 and recommended for admission.

52 (d) If the candidate for voluntary admission is a minor who
53 is fourteen years of age or older, the admitting health care
54 facility shall determine if the minor consents to or objects to his
55 or her admission to the facility. If the parent or guardian who
56 requested the minor's admission under this section revokes his
57 or her consent at any time, or if the minor fourteen years of age
58 or older objects at any time to his or her further treatment, the
59 minor shall be discharged within ninety-six hours to the custody
60 of the consenting parent or guardian, unless the chief medical
61 officer of the mental health facility files a petition for
62 involuntary hospitalization, pursuant to the provisions of section
63 three of this article, or the minor's continued hospitalization is
64 authorized as an involuntary hospitalization pursuant to the
65 provisions of article five of this chapter: *Provided*, That if the
66 ninety-six hour time period would result in the minor being
67 discharged and released on a Saturday, a Sunday or a holiday on
68 which the court is closed, the period of time in which the patient
69 shall be released by the facility shall be extended until the next
70 day which is not a Saturday, Sunday or legal holiday on which
71 the court is lawfully closed.

72 (e) Nothing in this section may be construed to obligate the
73 State of West Virginia for costs of voluntary hospitalizations
74 permitted by the provisions of this section.

75 (f) For the purposes of this section, all mental health
76 facilities in this state shall make a blank copy of their application
77 for admission immediately available to any person or entity who
78 requests the application. The application is "immediately
79 available" if it is promptly sent by facsimile or e-mail to the
80 requesting person or entity, or available through other immediate
81 electronic means, such as posting the blank application on the
82 facility's public website.

CHAPTER 129

**(Com. Sub. for H. B. 2352 - By Delegates R. Phillips,
Stowers, Skaff and Boggs)**

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating generally to bonding and special reclamation tax for coal mining permits; providing tax incentives for mine operators who reclaim bond forfeiture sites.

Be it enacted by the Legislature of West Virginia:

That §22-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.

- 1 (a) After a surface mining permit application has been
- 2 approved pursuant to this article, but before a permit has been
- 3 issued, each operator shall furnish a penal bond, on a form to be
- 4 prescribed and furnished by the secretary, payable to the State of
- 5 West Virginia and conditioned upon the operator faithfully
- 6 performing all of the requirements of this article and of the
- 7 permit. The penal amount of the bond shall be not less than
- 8 \$1,000 nor more than \$5,000 for each acre or fraction of an acre:
- 9 *Provided*, That the minimum amount of bond furnished for any

10 type of reclamation bonding shall be \$10,000. The bond shall
11 cover: (1) The entire permit area; or (2) that increment of land
12 within the permit area upon which the operator will initiate and
13 conduct surface mining and reclamation operations within the
14 initial term of the permit. If the operator chooses to use
15 incremental bonding, as succeeding increments of surface
16 mining and reclamation operations are to be initiated and
17 conducted within the permit area, the operator shall file with the
18 secretary an additional bond or bonds to cover the increments in
19 accordance with this section: *Provided, however,* That once the
20 operator has chosen to proceed with bonding either the entire
21 permit area or with incremental bonding, the operator shall
22 continue bonding in that manner for the term of the permit.

23 (b) The period of liability for bond coverage begins with
24 issuance of a permit and continues for the full term of the permit
25 plus any additional period necessary to achieve compliance with
26 the requirements in the reclamation plan of the permit.

27 (c) (1) The form of the bond shall be approved by the
28 secretary and may include, at the option of the operator, surety
29 bonding, collateral bonding (including cash and securities),
30 establishment of an escrow account, self bonding or a
31 combination of these methods. If collateral bonding is used, the
32 operator may elect to deposit cash or collateral securities or
33 certificates as follows: Bonds of the United States or its
34 possessions of the Federal Land Bank or of the Homeowners'
35 Loan Corporation; full faith and credit general obligation bonds
36 of the State of West Virginia or other states and of any county,
37 district or municipality of the State of West Virginia or other
38 states; or certificates of deposit in a bank in this state, which
39 certificates shall be in favor of the department. The cash deposit
40 or market value of the securities or certificates shall be equal to
41 or greater than the penal sum of the bond. The secretary shall,
42 upon receipt of any deposit of cash, securities or certificates,

43 promptly place the same with the Treasurer of the State of West
44 Virginia whose duty it is to receive and hold the deposit in the
45 name of the state in trust for the purpose for which the deposit is
46 made when the permit is issued. The operator making the deposit
47 is entitled, from time to time, to receive from the State Treasurer,
48 upon the written approval of the secretary, the whole or any
49 portion of any cash, securities or certificates so deposited, upon
50 depositing with him or her in lieu thereof cash or other securities
51 or certificates of the classes specified in this subsection having
52 value equal to or greater than the sum of the bond.

53 (2) The secretary may approve an alternative bonding system
54 if it will: (A) Reasonably assure that sufficient funds will be
55 available to complete the reclamation, restoration and abatement
56 provisions for all permit areas which may be in default at any
57 time; and (B) provide a substantial economic incentive for the
58 permittee to comply with all reclamation provisions.

59 (d) The secretary may accept the bond of the applicant itself
60 without separate surety when the applicant demonstrates to the
61 satisfaction of the secretary the existence of a suitable agent to
62 receive service of process and a history of financial solvency and
63 continuous operation sufficient for authorization to self insure.

64 (e) It is unlawful for the owner of surface or mineral rights
65 to interfere with the present operator in the discharge of the
66 operator's obligations to the state for the reclamation of lands
67 disturbed by the operator.

68 (f) All bond releases shall be accomplished in accordance
69 with the provisions of section twenty-three of this article.

70 (g) (1) The Special Reclamation Fund previously created is
71 continued. The Special Reclamation Water Trust Fund is created
72 within the State Treasury into and from which moneys shall be

73 paid for the purpose of assuring a reliable source of capital to
74 reclaim and restore water treatment systems on forfeited sites.
75 The moneys accrued in both funds, any interest earned thereon
76 and yield from investments by the State Treasurer or West
77 Virginia Investment Management Board are reserved solely and
78 exclusively for the purposes set forth in this section and section
79 seventeen, article one of this chapter. The funds shall be
80 administered by the secretary who is authorized to expend the
81 moneys in both funds for the reclamation and rehabilitation of
82 lands which were subjected to permitted surface mining
83 operations and abandoned after August 3, 1977, where the
84 amount of the bond posted and forfeited on the land is less than
85 the actual cost of reclamation, and where the land is not eligible
86 for abandoned mine land reclamation funds under article two of
87 this chapter. The secretary shall develop a long-range planning
88 process for selection and prioritization of sites to be reclaimed
89 so as to avoid inordinate short-term obligations of the assets in
90 both funds of such magnitude that the solvency of either is
91 jeopardized. The secretary may use both funds for the purpose of
92 designing, constructing and maintaining water treatment systems
93 when they are required for a complete reclamation of the
94 affected lands described in this subsection. The secretary may
95 also expend an amount not to exceed ten percent of the total
96 annual assets in both funds to implement and administer the
97 provisions of this article and, as they apply to the Surface Mine
98 Board, articles one and four, chapter twenty-two-b of this code.

99 (2)(A) A tax credit shall be granted against the tax imposed
100 by subsection (i) of this section to any mine operator who
101 performs reclamation or remediation at a bond forfeiture site
102 which otherwise would have been reclaimed using funds from
103 the Special Reclamation Fund or Special Reclamation Water
104 Trust Fund. The amount of credit shall be determined as
105 provided in this section.

106 (B) The amount of a reclamation tax credit granted under
107 this subsection shall be equal to the amount that the Tax
108 Commissioner determines, based on the project costs, as shown
109 in the records of the secretary, that would have been spent from
110 the Special Reclamation Fund or Special Reclamation Water
111 Trust Fund to accomplish the reclamation or remediation
112 performed by the mine operator, including expenditures for
113 water treatment.

114 (C) To claim the credit, the mine operator shall from time to
115 time file with the Tax Commissioner a written application
116 seeking the amount of the credit earned. Within thirty days of
117 receipt of the application, the Tax Commissioner shall issue a
118 certification of the amount of tax credit, if any, to be allocated to
119 the eligible taxpayer. Should the amount of the credit certified be
120 less than the amount applied for, the Tax Commissioner shall set
121 forth in writing the reason for the difference. Should no
122 certification be issued within the thirty-day period, the
123 application will be deemed certified. Any decision by the Tax
124 Commissioner is appealable pursuant to the provisions of the
125 "West Virginia Tax Procedure and Administration Act" set forth
126 in article ten, chapter eleven of the code. Applications for
127 certification of the proposed tax credit shall contain the
128 information and be in the detail and form as required by the Tax
129 Commissioner.

130 (h) The Tax Commissioner may promulgate rules for
131 legislative approval pursuant to the provisions of article three,
132 chapter twenty-nine-a of this code to carry out the purposes of
133 this subdivision two, subsection (g) of this section.

134 (i)(1) *Rate, deposits and review.*

135 (A) For tax periods commencing on and after July 1, 2009,
136 every person conducting coal surface mining shall remit a

137 special reclamation tax of fourteen and four-tenths cents per ton
138 of clean coal mined, the proceeds of which shall be allocated by
139 the secretary for deposit in the Special Reclamation Fund and the
140 Special Reclamation Water Trust Fund.

141 (B) For tax periods commencing on and after July 1, 2012,
142 the rate of tax specified in paragraph (A) of this subdivision is
143 discontinued and is replaced by the rate of tax specified in this
144 paragraph (B). For tax periods commencing on and after July 1,
145 2012, every person conducting coal surface mining shall remit
146 a special reclamation tax of twenty-seven and nine-tenths cents
147 per ton of clean coal mined, the proceeds of which shall be
148 allocated by the secretary for deposit in the Special Reclamation
149 Fund and the Special Reclamation Water Trust Fund. Of that
150 amount, fifteen cents per ton of clean coal mined shall be
151 deposited into the Special Reclamation Water Trust Fund.

152 (C) The tax shall be levied upon each ton of clean coal
153 severed or clean coal obtained from refuse pile and slurry pond
154 recovery or clean coal from other mining methods extracting a
155 combination of coal and waste material as part of a fuel supply.

156 (D) Beginning with the tax period commencing on July 1,
157 2009, and every two years thereafter, the special reclamation tax
158 shall be reviewed by the Legislature to determine whether the
159 tax should be continued: *Provided*, That the tax may not be
160 reduced until the Special Reclamation Fund and Special
161 Reclamation Water Trust Fund have sufficient moneys to meet
162 the reclamation responsibilities of the state established in this
163 section.

164 (2) In managing the Special Reclamation Program, the
165 secretary shall; (A) Pursue cost-effective alternative water
166 treatment strategies; and (B) conduct formal actuarial studies
167 every two years and conduct informal reviews annually on the

168 Special Reclamation Fund and Special Reclamation Water Trust
169 Fund.

170 (3) Prior to December 31, 2008, the secretary shall:

171 (A) Determine the feasibility of creating an alternate
172 program, on a voluntary basis, for financially sound operators by
173 which those operators pay an increased tax into the Special
174 Reclamation Fund in exchange for a maximum per-acre bond
175 that is less than the maximum established in subsection (a) of
176 this section;

177 (B) Determine the feasibility of creating an incremental
178 bonding program by which operators can post a reclamation
179 bond for those areas actually disturbed within a permit area, but
180 for less than all of the proposed disturbance and obtain
181 incremental release of portions of that bond as reclamation
182 advances so that the released bond can be applied to approved
183 future disturbance; and

184 (C) Determine the feasibility for sites requiring water
185 reclamation by creating a separate water reclamation security
186 account or bond for the costs so that the existing reclamation
187 bond in place may be released to the extent it exceeds the costs
188 of water reclamation.

189 (4) If the secretary determines that the alternative program,
190 the incremental bonding program or the water reclamation
191 account or bonding programs reasonably assure that sufficient
192 funds will be available to complete the reclamation of a forfeited
193 site and that the Special Reclamation Fund will remain fiscally
194 stable, the secretary is authorized to propose legislative rules in
195 accordance with article three, chapter twenty-nine-a of this code
196 to implement an alternate program, a water reclamation account

197 or bonding program or other funding mechanisms or a
198 combination thereof.

199 (j) This special reclamation tax shall be collected by the
200 State Tax Commissioner in the same manner, at the same time
201 and upon the same tonnage as the minimum severance tax
202 imposed by article twelve-b, chapter eleven of this code is
203 collected: *Provided*, That under no circumstance shall the special
204 reclamation tax be construed to be an increase in either the
205 minimum severance tax imposed by said article or the severance
206 tax imposed by article thirteen of said chapter.

207 (k) Every person liable for payment of the special
208 reclamation tax shall pay the amount due without notice or
209 demand for payment.

210 (l) The Tax Commissioner shall provide to the secretary a
211 quarterly listing of all persons known to be delinquent in
212 payment of the special reclamation tax. The secretary may take
213 the delinquencies into account in making determinations on the
214 issuance, renewal or revision of any permit.

215 (m) The Tax Commissioner shall deposit the moneys
216 collected with the Treasurer of the State of West Virginia to the
217 credit of the Special Reclamation Fund and Special Reclamation
218 Water Trust Fund.

219 (n) At the beginning of each quarter, the secretary shall
220 advise the State Tax Commissioner and the Governor of the
221 assets, excluding payments, expenditures and liabilities, in both
222 funds.

223 (o) To the extent that this section modifies any powers,
224 duties, functions and responsibilities of the department that may
225 require approval of one or more federal agencies or officials in
226 order to avoid disruption of the federal-state relationship

227 involved in the implementation of the federal Surface Mining
228 Control and Reclamation Act, 30 U. S. C. §1270 by the state, the
229 modifications will become effective upon the approval of the
230 modifications by the appropriate federal agency or official.

CHAPTER 130

(S. B. 462 - By Senators Facemire, Beach,
Kirkendoll, Palumbo, Cain, Edgell, Snyder, Stollings,
D. Hall, McCabe and Plymale)

(Passed April 11, 2013; in effect ninety days from passage.)

[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §22-3-20 and §22-3-21 of the Code of West Virginia, 1931, as amended, all relating to informal conferences on surface mining permit applications; extending time to hold informal conferences; and extending time from an informal conference in which the secretary must issue or deny a surface-mining permit.

Be it enacted by the Legislature of West Virginia:

That §22-3-20 and §22-3-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-20. Public notice; written objections; public hearings; informal conferences.

1 (a) At the time of submission of an application for a surface-
2 mining permit or a significant revision of an existing permit

3 pursuant to the provisions of this article, the applicant shall
4 submit to the department a copy of the required advertisement.
5 At the time of submission, the applicant shall place the
6 advertisement in a local newspaper of general circulation in the
7 county of the proposed surface-mining operation at least once a
8 week for four consecutive weeks. The secretary shall notify
9 various appropriate federal and state agencies as well as local
10 governmental bodies, planning agencies and sewage and water
11 treatment authorities or water companies in the locality in which
12 the proposed surface-mining operation will take place, notifying
13 them of the operator's intention to mine on a particularly
14 described tract of land and indicating the application number and
15 where a copy of the proposed mining and reclamation plan may
16 be inspected. These local bodies, agencies, authorities or
17 companies may submit written comments within a reasonable
18 period established by the secretary on the mining application
19 with respect to the effect of the proposed operation on the
20 environment which is within their area of responsibility. Such
21 comments shall be immediately transmitted by the secretary to
22 the applicant and to the appropriate office of the department. The
23 secretary shall provide the name and address of each applicant
24 to the Commissioner of the Division of Labor who shall within
25 fifteen days from receipt notify the secretary as to the applicant's
26 compliance, if necessary, pursuant to section fourteen, article
27 five, chapter twenty-one of this code.

28 (b) Any person having an interest which is or may be
29 adversely affected, or the officer or head of any federal, state or
30 local governmental agency, has the right to file written
31 objections to the proposed initial or revised permit application
32 for a surface-mining operation with the secretary within thirty
33 days after the last publication of the advertisement required in
34 subsection (a) of this section. Such objections shall be
35 immediately transmitted to the applicant by the secretary and
36 shall be made available to the public. If written objections are
37 filed and an informal conference requested within thirty days of

38 the last publication of the above notice, the secretary shall then
39 hold a conference in the locality of the proposed mining within
40 a reasonable time after the close of the public comment period.
41 Those requesting the conference shall be notified and the date,
42 time and location of the informal conference shall also be
43 advertised by the secretary in a newspaper of general circulation
44 in the locality at least two weeks prior to the scheduled
45 conference date. The secretary may arrange with the applicant,
46 upon request by any party to the conference proceeding, access
47 to the proposed mining area for the purpose of gathering
48 information relevant to the proceeding. An electronic or
49 stenographic record shall be made of the conference proceeding
50 unless waived by all parties. The record shall be maintained and
51 shall be accessible to the parties at their respective expense until
52 final release of the applicant's bond or other security posted in
53 lieu thereof. The secretary's authorized agent shall preside over
54 the conference. In the event all parties requesting the informal
55 conference stipulate agreement prior to the conference and
56 withdraw their request, a conference need not be held.

§22-3-21. Decision of secretary on permit application; hearing thereon.

1 (a) If an informal conference has been held, the secretary
2 shall issue and furnish the applicant for a permit and persons
3 who were parties to the informal conference with the written
4 finding granting or denying the permit, in whole or in part, and
5 stating the reasons therefor within sixty days of the informal
6 conference, notwithstanding the requirements of subsection (a),
7 section eighteen of this article.

8 (b) If the application is approved, the permit shall be issued.
9 If the application is disapproved, specific reasons therefor must
10 be set forth in the notification. Within thirty days after the
11 applicant is notified of the secretary's decision, the applicant or
12 any person with an interest which is or may be adversely
13 affected may request a hearing before the Surface Mine Board as

- 14 provided in article one, chapter twenty-two-b of this code to
15 review the secretary's decision.

CHAPTER 131

(Com. Sub. for H. B. 2815 - By Delegates Miley,
Fleischauer, Skinner, Shott and Barill)

[Passed April 10, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 22, 2013.]

AN ACT to amend and reenact §44-10-3 of the Code of West Virginia, 1931, as amended, relating generally to clarifying and modifying the process of appointing and terminating guardians for minors; authorizing concurrent jurisdiction of circuit and family courts for appointment of guardian for a minor; providing venue for petition for appointment; providing proceedings to be conducted in accordance with the Rules of Practice and Procedure for Minor Guardianship Proceedings; providing process for appointment of guardian; setting forth when the circuit clerk is to notify the court of the filing of a petition and when the court is to hold a hearing; setting forth what the court is to consider in appointing a guardian; providing for the appointment of a temporary guardian; providing for the termination or revocation of the guardianship appointment; and providing for the confidentiality of a guardian proceeding.

Be it enacted by the Legislature of West Virginia:

That §44-10-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-3. Appointment and termination of guardian for a minor.

1 (a) The circuit court and family court have concurrent
2 jurisdiction to appoint a guardian for a minor.

3 (b) Venue for a petition for appointment of guardianship is
4 in the county in which the minor has resided for the past six
5 months unless the court finds extraordinary circumstances for a
6 sooner filing. If the child is a nonresident of this state and only
7 the guardianship of the estate is sought the petition may be filed
8 in the county in which the child has an estate.

9 (c) All proceedings shall be conducted in accordance with
10 the Rules of Practice and Procedure for Minor Guardianship
11 Proceedings.

12 (d) Any responsible person with knowledge of the facts
13 regarding the welfare and best interests of a minor may petition
14 for an appointment of a guardian except a parent or other person
15 whose rights to the minor have been terminated. No guardianship
16 petition may be considered if the child who is the subject of the
17 petition is involved in another court proceeding relating to
18 custody or guardianship or if the petitioner is a parent seeking
19 custodial rights adverse to the other parent.

20 (e) Within two days of the filing of a petition for the
21 appointment of a guardian, the circuit clerk shall notify the court.
22 The court shall hold a hearing upon the petition for the
23 appointment of a guardian within ten days after the petition is
24 filed. If all persons entitled to service in accordance with the
25 Rules of Practice and Procedure for Minor Guardianship
26 Proceedings have not been served at least five days prior to the
27 hearing or have not waived service the court shall continue the
28 hearing but may appoint a temporary guardian pursuant to
29 subsection (g) below.

30 (f) The court may appoint a guardian for a minor if the court
31 finds by clear and convincing evidence that the appointment is
32 in the minor's best interest and:

33 (1) The parents consent;

34 (2) The parents' rights have been previously terminated;

35 (3) The parents are unwilling or unable to exercise their
36 parental rights;

37 (4) The parents have abandoned their rights by a material
38 failure to exercise them for a period of more than six months; or

39 (5) There are extraordinary circumstances that would, in all
40 reasonable likelihood, result in serious detriment to the child if
41 the petition is denied.

42 (g) Whether or not one or more of the conditions of
43 subsection (f) have been established, the court may appoint a
44 temporary guardian for a minor upon a showing that an
45 immediate need exists or that a period of transition into the
46 custody of a parent is needed so long as the appointment is in the
47 best interest of the minor. The temporary guardian has the
48 authority of a guardian appointed pursuant to subsection (f) but
49 the duration of the temporary guardianship may not exceed six
50 months. A temporary guardianship may be extended beyond six
51 months upon further order of the court finding continued need in
52 the best interest of the minor.

53 (h) Any suitable person may be appointed as the minor's
54 guardian. A parent shall receive priority subject only to the
55 provisions of subsections (d) and (f) above. However, in every
56 case the competency and fitness of the proposed guardian must
57 be established and a determination made that the appointment is
58 in the best interest of the child.

59 (i) The court, the guardian or the minor may revoke or
60 terminate the guardianship appointment when:

61 (1) The minor reaches the age of eighteen and executes a
62 release stating that the guardian's estate was properly
63 administered and that the minor has received the assets of the
64 estate from the guardian;

65 (2) The guardian or the minor dies;

66 (3) The guardian petitions the court to resign and the court
67 enters an order approving the resignation; or

68 (4) A petition is filed by the guardian, the minor, a parent or
69 an interested person or upon the motion of the court stating that
70 the minor is no longer in need of the assistance or protection of
71 a guardian due to changed circumstances and the termination of
72 the guardianship would be in the minor's best interest.

73 (j) For a petition to revoke or terminate a guardianship filed
74 by a parent, the burden of proof is on the moving party to show
75 by a preponderance of the evidence that there has been a material
76 change of circumstances and that a revocation or termination is
77 in the child's best interest.

78 (k) A guardianship may not be terminated by the court if
79 there are any assets in the estate due and payable to the minor.
80 Another guardian may be appointed upon the resignation of a
81 guardian whenever there are assets in the estate due and payable
82 to the minor.

83 (l) Other than court orders and case indexes, all other records
84 of a guardian proceeding involving a minor are confidential and
85 shall not be disclosed to anyone who is not a party to the
86 proceeding, counsel of record for the proceeding, the court
87 presiding over the proceeding or other family or circuit court
88 presiding over another proceeding involving the minor absent a
89 court order permitting examination of such records.

CHAPTER 132

**(H. B. 2770 - By Delegates Caputo, Longstreth,
Manchin and Stagers)**

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 1, 2013.]

AN ACT to amend and reenact §17A-6-7 of the Code of West Virginia, 1931, as amended, relating to permitting dealers who sell fewer than eighteen new or used motor vehicles during a year to have their dealer licenses renewed.

Be it enacted by the Legislature of West Virginia:

That §17A-6-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR
DISMANTLERS; SPECIAL PLATES;
TEMPORARY PLATES OR MARKERS.**

**§17A-6-7. When application to be made; expiration of license
certificate; renewal.**

1 (a) Every license certificate issued in accordance with the
2 provisions of this article shall, unless sooner suspended or
3 revoked, expire on June 30 next following the issuance thereof.

4 (b) A license certificate may be renewed each year in the
5 same manner, for the same fee as prescribed in section ten of this
6 article and upon the same basis as an original license certificate
7 is issued under section six of this article.

8 All applications for the renewal of any license certificate
9 shall be filed with the commissioner at least thirty days before

10 the expiration thereof. Any application for renewal of any
11 license certificate not filed at least thirty days before the
12 expiration may not be renewed except upon payment of the same
13 fee as an original license certificate as prescribed in subsection
14 (a), section ten of this article. The commissioner may allow the
15 delinquent applicant to complete an abbreviated application for
16 renewal in lieu of an original application.

CHAPTER 133

**(Com. Sub. for S. B. 448 - By Senators Beach, Plymale,
Fitzsimmons and Williams)**

[Passed April 4, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 19, 2013.]

AN ACT to amend and reenact §17A-6-10c of the Code of West Virginia, 1931, as amended, relating to authorizing the commissioner to issue no more than ten additional special demonstration plates, upon a showing of need, to new and used motor vehicle dealers engaged in the business of selling trailers, truck-tractors, road-tractors or trucks and that demonstrate the motor vehicles under actual work conditions to potential purchasers; and setting fee amount for additional plates.

Be it enacted by the Legislature of West Virginia:

That §17A-6-10c of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR
DISMANTLERS; SPECIAL PLATES;
TEMPORARY PLATES OR MARKERS.**

PART III. FEES AND DEALER SPECIAL
PLATES GENERALLY.

**§17A-6-10c. Special demonstration plates for dealers in trailers,
truck-tractors, road-tractors and trucks;
application; fee.**

1 (a) Notwithstanding any other provisions of this code, a new
2 motor vehicle dealer or used motor vehicle dealer engaged in the
3 business of selling trailers, truck-tractors, road-tractors or trucks
4 that demonstrates the motor vehicles under actual work
5 conditions to potential purchasers shall obtain a special
6 demonstration plate from the Division of Motor Vehicles. The
7 motor vehicle dealer may obtain special demonstration plates
8 without first titling or registering each vehicle.

9 (b) The commissioner shall prescribe the application form
10 for these special demonstration plates and shall require the
11 applicant to submit proof of the applicant's status as a bona fide
12 dealer in motor vehicles and to certify that the applicant needs
13 special demonstration plates in the ordinary course of business.

14 The commissioner, upon approving an application, shall
15 issue to the new motor vehicle dealer or used motor vehicle
16 dealer up to four special demonstration plates which display the
17 term "demonstration" or "demo" and a distinguishing number
18 assigned to the motor vehicle dealer. The commissioner may
19 issue no more than ten additional special demonstration plates to
20 a licensee upon a showing that the licensee has sales or potential
21 sales justifying additional plates. This showing may include, but
22 is not limited to, the dealer's on-site inventory of the applicable
23 type of vehicles, previous sales of applicable vehicles or the
24 geographical divergence of the dealer's customer base.

25 (c) The annual fee for special demonstration plates is \$100
26 for the first plate and \$50 for each additional special

27 demonstration plate that is issued, not to exceed a total of
28 fourteen plates per dealer.

29 (d) Each motor vehicle dealer who is issued special
30 demonstration plates shall keep a written record, on a form
31 approved by the commissioner and open to inspection by a
32 police officer or employee of the division, containing the
33 following information:

34 (1) Identification of the motor vehicles upon which the
35 special demonstration plates are used;

36 (2) The times and dates during which each special
37 demonstration plate is used;

38 (3) The name and address of the company or individual
39 using a motor vehicle on which a special demonstration plate is
40 used; and

41 (4) Other information considered necessary by the
42 commissioner.

43 (e) Each motor vehicle operated under the provisions of this
44 section is considered to be registered at the maximum vehicle
45 weights allowable under article seventeen, chapter seventeen-c
46 of this code.

47 (f) A motor vehicle dealer shall not:

48 (1) Use a special demonstration plate issued under the
49 provisions of this section on a motor vehicle which is not being
50 demonstrated;

51 (2) Use a special demonstration plate to demonstrate a single
52 motor vehicle for more than seven calendar days in a calendar
53 year for a single customer;

54 (3) Use a special demonstration plate on a motor vehicle
55 leased or rented to a customer; or

56 (4) Use a special demonstration plate in any way other than
57 to demonstrate the on-the-job capabilities of a motor vehicle to
58 a potential purchaser.

59 (g) The motor vehicle dealer is required to furnish a
60 certificate of insurance in the amount required by regulations of
61 the West Virginia Public Service Commission or the United
62 States Department of Transportation for the class of motor
63 carrier for which the motor vehicle is to be demonstrated.

CHAPTER 134

(S. B. 515 - By Senators Cole, Carmichael,
Green, D. Hall and Stollings)

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §17C-15-42 of the Code of West Virginia, 1931, as amended, relating to equipment installed in motor vehicles; prohibiting video screens, video monitors, televisions and television receivers in view of the driver while a motor vehicle is in motion; exceptions; restrictions; conditions for use; and inapplicability of prohibition to specific devices.

Be it enacted by the Legislature of West Virginia:

That § 17C-15-42 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-42. Video screens, video monitors and television receivers in view of driver prohibited; exceptions.

1 (a) No motor vehicle may be operated on a street or highway
2 in this state when equipped with a television receiver, video
3 monitor, television or video screen unless the receiver, screen or
4 monitor is configured so that the moving images are not in view
5 of the operator while the vehicle is in motion, or it falls within
6 one or more of the categories set forth in subsections (b) or (c)
7 of this section.

8 (b) This prohibition does not apply to the following
9 equipment installed in a vehicle:

10 (1) A visual display if it does not show video or television
11 broadcast images in view of the operator while the motor vehicle
12 is in motion;

13 (2) A global positioning device;

14 (3) A mapping display;

15 (4) A visual display used to enhance or supplement the
16 driver's view forward, behind or to the sides of a motor vehicle
17 for the purpose of maneuvering the vehicle;

18 (5) A visual display used to enhance or supplement a
19 driver's view of vehicle occupants; or

20 (6) Television-type receiving equipment used exclusively for
21 safety or traffic engineering information.

22 (c) A television receiver, video monitor, television or video
23 screen or other similar means of visually displaying a television
24 broadcast or video signal is not prohibited if the equipment has
25 an interlock device that, when the motor vehicle is driven,
26 disables the equipment for all uses except as a visual display
27 described in subdivisions (1) through (6) of subsection (b) of this
28 section.

CHAPTER 135

**(Com. Sub. for S. B. 435 - By Senators Snyder, Miller,
Kessler (Mr. President), Jenkins, Yost, Stollings, Plymale,
McCabe, Fitzsimmons, Palumbo and Beach)**

[Passed April 13, 2013; in effect July 1, 2013.]

[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to continuing the Municipal Home Rule Pilot Program; continuing the Municipal Home Rule Pilot Program; continuing the Municipal Home Rule Board; setting forth legislative findings; authorizing Class I, II, III and IV municipalities to participate in the program; clarifying the voting privileges of members of the Municipal Home Rule Board; clarifying the powers and duties of the board; establishing written plan requirements for municipalities; establishing requirements for the adoption of ordinances; requiring public hearings; setting forth powers and duties of the participating municipalities; prohibiting certain acts by participating municipalities; providing the opportunity for participating municipalities to withdraw from the program; providing for amendments to the written plan; requiring a performance review of the pilot program; establishing reporting requirements; validating the continuance of certain ordinances passed by the municipalities participating in the pilot program; prohibiting municipalities participating in the pilot program from restricting the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any firearm, firearm accessory or accoutrement, or any ammunition or ammunition component; providing limited exceptions to the firearms prohibition; providing for applicability and effective dates of prohibition; and establishing a termination date of the pilot program.

Be it enacted by the Legislature of West Virginia:

That §8-1-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS;
GENERAL PROVISIONS; CONSTRUCTION.**

§8-1-5a. Municipal Home Rule Pilot Program.

1 (a) *Legislative findings.* — The Legislature finds and
2 declares that:

3 (1) The initial Municipal Home Rule Pilot Program brought
4 innovative results, including novel municipal ideas that became
5 municipal ordinances which later resulted in new statewide
6 statutes;

7 (2) The initial Municipal Home Rule Pilot Program also
8 brought novel municipal ideas that resulted in court challenges
9 against some of the participating municipalities;

10 (3) The Municipal Home Rule Board was an essential part
11 of the initial Municipal Home Rule Pilot Program but it lacked
12 some needed powers and duties;

13 (4) Municipalities still face challenges delivering services
14 required by federal and state law or demanded by their
15 constituents;

16 (5) Municipalities are sometimes restrained by state statutes,
17 policies and rules that challenge their ability to carry out their
18 duties and responsibilities in a cost-effective, efficient and
19 timely manner;

20 (6) Continuing the Municipal Home Rule Pilot Program is
21 in the public interest; and

22 (7) Increasing the powers and duties of the Municipal Home
23 Rule Board will enhance the Municipal Home Rule Pilot
24 Program.

25 (b) *Continuance of pilot program.* — The Municipal Home
26 Rule Pilot Program is continued until July 1, 2019. The
27 ordinances enacted by the four participating municipalities
28 pursuant to the initial Municipal Home Rule Pilot Program are
29 hereby authorized and may remain in effect until the ordinances
30 are repealed, but are null and void if amended and such
31 amendment is not approved by the Municipal Home Rule Board:
32 *Provided, That any ordinance enacting a municipal occupation*
33 *tax is hereby null and void.*

34 (c) *Authorizing participation.* —

35 (1) Commencing July 1, 2013, twenty Class I, Class II, Class
36 III and/or Class IV municipalities that are current in payment of
37 all state fees may participate in the Municipal Home Rule Pilot
38 Program pursuant to the provisions of this section.

39 (2) The four municipalities participating in the pilot program
40 on July 1, 2012, are hereby authorized to continue in the pilot
41 program and may amend current written plans and/or submit
42 new written plans in accordance with the provisions of this
43 section.

44 (3) If any of the four municipalities participating in the pilot
45 program on July 1, 2012, do not want to participate in the pilot
46 program, then on or before June 1, 2014, the municipality must
47 submit a written letter to the board indicating the municipality's
48 intent not to participate and the board may choose another
49 municipality to fill the vacancy: *Provided, That if a municipality*
50 *chooses not to participate further in the pilot program, its*
51 *ordinances enacted pursuant to the Municipal Home Rule Pilot*
52 *Program are hereby authorized and may remain in effect until*

53 the ordinances are repealed, but are null and void if amended:
54 *Provided, however,* That any ordinance enacting a municipal
55 occupation tax is null and void.

56 (d) *Municipal Home Rule Board.* — The Municipal Home
57 Rule Board is hereby continued. The board members serving on
58 the board on July 1, 2012, may continue to serve, except that the
59 chair of the Senate Committee on Government Organization and
60 the chair of the House Committee on Government Organization
61 shall be ex officio nonvoting members. Effective July 1, 2013,
62 the Municipal Home Rule Board shall consist of the following
63 five voting members:

64 (1) The Governor, or a designee, who shall serve as chair;

65 (2) The Executive Director of the West Virginia
66 Development Office or a designee;

67 (3) One member representing the Business and Industry
68 Council, appointed by the Governor with the advice and consent
69 of the Senate;

70 (4) One member representing the largest labor organization
71 in the state, appointed by the Governor with the advice and
72 consent of the Senate; and

73 (5) One member representing the West Virginia Chapter of
74 American Institute of Certified Planners, appointed by the
75 Governor with the advice and consent of the Senate.

76 (e) *Board's powers and duties.* — The Municipal Home
77 Rule Board has the following powers and duties:

78 (1) Review, evaluate, make recommendations and approve
79 or reject, by a majority vote of the board, each aspect of the
80 written plan submitted by a municipality;

81 (2) By a majority vote of the board, select, based on the
82 municipality's written plan, new Class I, Class II, Class III
83 and/or Class IV municipalities to participate in the Municipal
84 Home Rule Pilot Program;

85 (3) Review, evaluate, make recommendations and approve
86 or reject, by a majority vote of the board, the amendments to the
87 written plans submitted by municipalities;

88 (4) Approve or reject, by a majority vote of the board, each
89 ordinance submitted by a participating municipality pursuant to
90 its written plan or its amendments to the written plan;

91 (5) Consult with any agency affected by the written plans or
92 the amendments to the written plans; and

93 (6) Perform any other powers or duties necessary to
94 effectuate the provisions of this section.

95 (f) *Written plan.* — On or before June 1, 2014, a Class I,
96 Class II, Class III or Class IV municipality desiring to participate
97 in the Municipal Home Rule Pilot Program shall submit a
98 written plan to the board stating in detail the following:

99 (1) The specific laws, acts, resolutions, policies, rules or
100 regulations which prevent the municipality from carrying out its
101 duties in the most cost-efficient, effective and timely manner;

102 (2) The problems created by the laws, acts, resolutions,
103 policies, rules or regulations;

104 (3) The proposed solutions to the problems, including all
105 proposed changes to ordinances, acts, resolutions, rules and
106 regulations: *Provided*, That the specific municipal ordinance
107 instituting the solution does not have to be included in the
108 written plan; and

109 (4) A written opinion, by an attorney licensed to practice in
110 West Virginia, stating that the proposed written plan does not
111 violate the provisions of this section.

112 (g) *Public hearing on written plan.* — Prior to submitting its
113 written plan to the board, the municipality shall:

114 (1) Hold a public hearing on the written plan;

115 (2) Provide notice at least thirty days prior to the public
116 hearing by a Class II legal advertisement;

117 (3) Make a copy of the written plan available for public
118 inspection at least thirty days prior to the public hearing; and

119 (4) After the public hearing, adopt an ordinance authorizing
120 the municipality to submit a written plan to the Municipal Home
121 Rule Board after the proposed ordinance has been read two
122 times.

123 (h) *Selection of municipalities.* — On or after June 1, 2014,
124 by a majority vote, the Municipal Home Rule Board may select
125 from the municipalities that submitted written plans and were
126 approved by the board by majority vote, new Class I, Class II,
127 Class III and/or Class IV municipalities to participate in the
128 Municipal Home Rule Pilot Program.

129 (i) *Ordinance, act, resolution, rule or regulation.* — After
130 being selected to participate in the Municipal Home Rule Pilot
131 Program and prior to enacting an ordinance, act, resolution, rule
132 or regulation based on the written plan, the municipality shall:

133 (1) Hold a public hearing on the proposed ordinance, act,
134 resolution, rule or regulation;

135 (2) Provide notice at least thirty days prior to the public
136 hearing by a Class II legal advertisement;

137 (3) Make a copy of the proposed ordinance, act, resolution,
138 rule or regulation available for public inspection at least thirty
139 days prior to the public hearing;

140 (4) After the public hearing, submit the comments, either in
141 audio or written form, to the Municipal Home Rule Board;

142 (5) Obtain approval, from the Municipal Home Rule Board
143 by a majority vote, for the proposed ordinance, act, resolution,
144 rule or regulation; and

145 (6) After obtaining approval from the Municipal Home Rule
146 Board, read the proposed ordinance, act, resolution, rule or
147 regulation at least two times.

148 (j) *Powers and duties of Municipalities.* — The
149 municipalities participating in the Municipal Home Rule Pilot
150 Program have the authority to pass an ordinance, act, resolution,
151 rule or regulation, under the provisions of this section, that is not
152 contrary to:

153 (1) Environmental law;

154 (2) Bidding on government construction and other contracts;

155 (3) The Freedom of Information Act;

156 (4) The Open Governmental Proceedings Act;

157 (5) Wages for construction of public improvements;

158 (6) The provisions of this section; and

159 (7) The municipality's written plan.

160 (k) *Prohibited acts.* — The municipalities participating in
161 the Municipal Home Rule Pilot Program do not have the

162 authority to pass an ordinance, act, resolution, rule or regulation,
163 under the provisions of this section, pertaining to:

164 (1) The Constitutions of the United States or West Virginia;

165 (2) Federal law or crimes and punishment;

166 (3) Chapters sixty-a, sixty-one and sixty-two of this code or
167 state crimes and punishment;

168 (4) Pensions or retirement plans;

169 (5) Annexation;

170 (6) Taxation: *Provided*, That a participating municipality
171 may enact a municipal sales tax up to one percent if it reduces or
172 eliminates its municipal business and occupation tax: *Provided*,
173 *however*, That if a municipality subsequently reinstates or raises
174 the municipal business and occupation tax it previously reduced
175 or eliminated under the Municipal Home Rule Pilot Program, it
176 shall eliminate the municipal sales tax enacted under the
177 Municipal Home Rule Pilot Program: *Provided further*, That
178 any municipality that imposes a municipal sales tax pursuant to
179 this section shall use the services of the Tax Commissioner to
180 administer, enforce and collect the tax in the same manner as the
181 state consumers sales and service tax and use tax under the
182 provisions of articles fifteen, fifteen-a and fifteen-b, chapter
183 eleven of this code and all applicable provisions of the
184 streamlined sales and use tax agreement: *And provided further*,
185 That such tax will not apply to the sale of motor fuel or motor
186 vehicles;

187 (7) Tax increment financing;

188 (8) Extraction of natural resources;

189 (9) Persons or property outside the boundaries of the
190 municipality: *Provided*. That this prohibition under the

191 Municipal Home Rule Pilot Program does not affect a
192 municipality's powers outside its boundary lines under other
193 sections of this chapter, other chapters of this code or court
194 decisions;

195 (10) Marriage and divorce laws;

196 (11) Restricting the carrying of a firearm, as that term is
197 defined in section two, article seven, chapter sixty-one of this
198 code: *Provided, That*, notwithstanding the provisions of
199 subsection (p) of this section, municipalities may regulate the
200 carrying of a firearm in municipal buildings dedicated to
201 government operations, other than parking buildings or garages:
202 *Provided, however, That* on other municipal property,
203 municipalities may regulate only those persons not licensed to
204 carry a concealed firearm; and

205 (12) An occupation tax, fee or assessment payable by a non-
206 resident of a municipality.

207 (1) *Amendments to written plans.* — A municipality selected
208 to participate in the Municipal Home Rule Pilot Program may
209 amend its written plan at any time.

210 (m) *Reporting requirements.* — Commencing December 1,
211 2015, and each year thereafter, each participating municipality
212 shall give a progress report to the Municipal Home Rule Board
213 and commencing January 1, 2016, and each year thereafter, the
214 Municipal Home Rule Board shall give a summary report of all
215 the participating municipalities to the Joint Committee on
216 Government and Finance.

217 (n) *Performance Evaluation and Review Division review.*
218 — Before January 1, 2019, the Performance Evaluation and
219 Review Division of the Legislative Auditor's office shall
220 conduct a performance review on the pilot program and the

221 participating municipalities. The review shall include the
222 following:

223 (1) An evaluation of the effectiveness of expanded home rule
224 on the participating municipalities;

225 (2) A recommendation as to whether the expanded home rule
226 should be continued, reduced, expanded or terminated;

227 (3) A recommendation as to whether any legislation is
228 necessary; and

229 (4) Any other issues considered relevant.

230 (o) *Termination of the pilot program.* — The Municipal
231 Home Rule Pilot Program terminates on July 1, 2019. No
232 ordinance, act, resolution, rule or regulation may be enacted by
233 a participating municipality after July 1, 2019, pursuant to the
234 provisions of this section. An ordinance, act, resolution, rule or
235 regulation enacted by a participating municipality under the
236 provisions of this section during the period of the Municipal
237 Home Rule Pilot Program shall continue in full force and effect
238 until repealed, but is null and void if it is amended and such
239 amendment is not approved by the Municipal Home Rule Board.

240 (p) *Additional requirements for participation.* —

241 (1) The Class I, Class II, Class III and/or Class IV
242 municipalities that wish to participate in the Municipal Home
243 Rule Pilot Program, pursuant to the provisions of this section,
244 must agree to the requirements set forth in this subsection
245 concerning regulation of firearms, ammunition and firearm
246 accessories: *Provided*, That if the four municipalities
247 participating in the pilot program on July 1, 2012, wish to
248 continue in the pilot program then those municipalities must also
249 agree to comply with the requirements of this subsection.

250 (2) *Definitions.* —

251 As used in this subsection:

252 (A) “Ammunition” means fixed cartridge ammunition,
253 shotgun shells, the individual components of fixed cartridge
254 ammunition and shotgun shells, projectiles for muzzle-loading
255 firearms and any propellant used in firearms or ammunition.

256 (B) “Firearm accessory” means a device specifically
257 designed or adapted to enable the wearing or carrying about
258 one’s person, or the storage or mounting in or on a conveyance,
259 of a firearm, or an attachment or device specifically designed or
260 adapted to be inserted into or affixed onto a firearm to enable,
261 alter or improve the functioning or capabilities of the firearm.

262 (C) “Firearm” has the same meaning as in section two,
263 article seven of chapter sixty-one.

264 (3) *General rule.* —

265 (A) Notwithstanding any other provision of this code to the
266 contrary, except as otherwise provided in this section,
267 municipalities participating in the Municipal Home Rule Pilot
268 Program, pursuant to this section, shall not restrict in any manner
269 the right of any person to purchase, possess, transfer, own, carry,
270 transport, sell or store any revolver, pistol, rifle or shotgun, or
271 any other firearm, or any ammunition or ammunition
272 components to be used therewith, or the keeping of gunpowder
273 so as to directly or indirectly prohibit the ownership of the
274 ammunition, or, to restrict in any manner the right of any person
275 to purchase, possess, transfer, own, carry, transport, sell or store
276 any other firearm accessory or accoutrement, under any order,
277 ordinance or rule promulgated or enforced by the municipality.
278 This subsection may not be construed to prevent any law
279 enforcement official with appropriate authority from enforcing
280 any statute enacted by the state.

281 (B) The authority of a municipality to regulate firearms,
282 ammunition or firearm accessories may not be inferred from its
283 proprietary authority, home rule status or any other inherent or
284 general power.

285 (C) Any existing or future orders, ordinances or rules
286 promulgated or enforced in violation of this subsection are null
287 and void.

288 (4) *Applicability and effective dates.* —

289 Ninety days after a new municipality has been selected by
290 the Board to participate in the pilot program, or a previously
291 participating municipality has chosen to continue to participate
292 in the pilot program, any municipal gun ordinances previously
293 authorized by the provisions of section five-a, article twelve of
294 this chapter shall no longer be of any force or effect for any
295 municipality participating in this program to the extent they are
296 in conflict with the provisions of this subsection: *Provided*, That
297 no provision in this subsection may be construed to limit the
298 authority of a municipality to restrict the commercial use of real
299 estate in designated areas through planning or zoning ordinances.

CHAPTER 136

**(Com. Sub. for H. B. 2964 - By Delegates Lawrence,
Skaff, Caputo, Diserio, Skinner, R. Phillips,
Sponaugle and Westfall)**

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-10-1b, relating to the

powers of mayors of Class III cities and Class IV towns or villages with paid police departments not subject to civil service; authorizing the mayor to appoint chief of police; and providing that a Class III city or Class IV town or village may provide by ordinance whether the appointed chief of police shall be reinstated to his or her previous rank following term as chief of police.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §8-10-1b, to read as follows:

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-1b. Authority to appoint police chief; reinstating to previous rank.

1 (a) Unless otherwise provided by charter, the mayor of a
2 Class III city or Class IV town or village that has a paid police
3 department that is not subject to the civil services provisions set
4 out in article fourteen of this chapter, may appoint a chief of
5 police.

6 (b) A Class III city or Class IV town or village may provide
7 by ordinance whether the individual appointed chief of police
8 who held a position as a member of the paid police department
9 prior to his or her appointment as chief of police shall be
10 reinstated to the officer's previous rank following his or her term
11 as chief of police.

CHAPTER 137

(Com. Sub. for S. B. 564 - By Senator Snyder)

[Passed April 13, 2013; in effect ninety days from passage.]
 [Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §8-16-5 of the Code of West Virginia, 1931, as amended, relating to increasing the minimum construction cost of a municipal public works project before competitive bidding is required; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §8-16-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

PART III. GENERAL POWERS AND AUTHORITY.

§8-16-5. Powers of board.

1 (a) The board shall have plenary power and authority to take
 2 all steps and proceedings, and to make and enter into all
 3 contracts or agreements necessary, appropriate, useful,
 4 convenient or incidental to the performance of its duties and the
 5 execution of its powers and authority under this article:
 6 *Provided*, That any contract or agreement relating to the
 7 financing, or the construction, reconstruction, establishment,
 8 acquisition, improvement, renovation, extension, enlargement,
 9 increase, equipment, operation or maintenance of any such
 10 works, and any trust indenture with respect thereto as hereafter
 11 provided for, shall be approved by the governing body or bodies.

12 (b) The board may employ engineers, architects, inspectors,
13 superintendents, managers, collectors, attorneys and such other
14 employees as in its judgment may be necessary in the execution
15 of its powers and duties, and may fix their compensation, all of
16 whom shall do such work as the board may direct. All
17 compensation and expenses incurred in carrying out the
18 provisions of this article shall be paid solely from funds provided
19 under the authority of this article, and the board shall not
20 exercise or carry out any power or authority herein given it so as
21 to bind said board or any municipality beyond the extent to
22 which money shall have been, or may be provided under the
23 authority of this article.

24 (c) No contract or agreement with any contractor or
25 contractors for labor or materials, or both, exceeding in amount
26 the sum of \$25,000 shall be made without advertising for bids,
27 which bids shall be publicly opened and an award made to the
28 lowest responsible bidder, with power and authority in the board
29 to reject any and all bids.

30 (d) After the construction, reconstruction, establishment,
31 acquisition, renovation or equipment of any such works, the
32 board shall maintain, operate, manage and control the same, and
33 may order and complete any improvements, extensions,
34 enlargements, increase or repair (including replacements) of and
35 to the works that the board may consider expedient, if funds
36 therefor be available, or are made available, as provided in this
37 article, and shall establish rules for the use, maintenance and
38 operation of the works, and do all things necessary or expedient
39 for the successful operation thereof, and for stormwater systems
40 and associated stormwater management programs, those
41 activities which include, but are not limited to, stormwater and
42 surface runoff water quality improvement activities necessary to
43 comply with all federal and state requirements. All public ways
44 or public works damaged or destroyed by the board in carrying
45 out its authority under this article shall be restored or repaired by

46 the board and placed in their original condition, as nearly as
47 practicable, if requested so to do by proper authority, out of the
48 funds provided under the authority of this article.

CHAPTER 138

**(Com. Sub. for S. B. 358 - By Senators Jenkins,
Plymale, Chafin and McCabe)**

[Passed April 11, 2013; in effect from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §8-22-18a, §8-22-19a and §8-22-25 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §8-22-18c; and to amend and reenact §8-22A-4 and §8-22A-9 of said code, all relating to municipal policemen and firemen pensions; providing additional investigatory and legal powers and duties of the West Virginia Municipal Pensions Oversight Board; liability disclaimer for board acts or omissions concerning investigatory or legal actions; requiring certain notice of lawsuit to the West Virginia Municipal Pensions Oversight Board; limiting certain court orders under certain circumstances; clarifying refunds to members; clarifying circumstances under which a member may retire when the member's service has been interrupted by duty with the armed forces of the United States; extending the cut-off date for the West Virginia Municipal Police Officers and Firefighters Retirement System plan to 2017; and continuing the municipality's disability retirement purchase requirement until 2017.

Be it enacted by the Legislature of West Virginia:

That §8-22-18a, §8-22-19a and §8-22-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code

be amended by adding thereto a new section, designated §8-22-18c; and that §8-22A-4 and §8-22A-9 of said code be amended and reenacted, all to read as follows:

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY;
POLICEMEN'S PENSION AND RELIEF
FUND; FIREMEN'S PENSION AND
RELIEF FUND; PENSION PLANS FOR
EMPLOYEES OF WATERWORKS
SYSTEM, SEWERAGE SYSTEM OR
COMBINED WATERWORKS AND
SEWERAGE SYSTEM.**

**§8-22-18a. West Virginia Municipal Pensions Oversight Board
created; powers and duties; management;
composition; terms; quorum; expenses; reports.**

1 (a) (1) The West Virginia Municipal Pensions Oversight
2 Board, established in 2009, is hereby continued as a public body
3 corporate for the purpose of monitoring and improving the
4 performance of municipal policemen's and firemen's pension
5 and relief funds to assure prudent administration, investment and
6 management of the funds. Management of the oversight board
7 shall be vested solely in the members of the oversight board.
8 Duties of the oversight board shall include, but not be limited to,
9 assisting municipal boards of trustees in performing their duties,
10 assuring the funds' compliance with applicable laws, providing
11 for actuarial studies, distributing tax revenues to the funds,
12 initiating or joining legal actions on behalf of active or retired
13 pension fund members or municipal boards of trustees to protect
14 interests of the members in the funds and taking other actions as
15 may be reasonably necessary to provide for the security and
16 fiscal integrity of the pension funds. The oversight board's
17 authority to initiate legal action does not preempt the authority
18 of municipalities, municipal policemen's and firemen's boards
19 of trustees or pension fund active members, beneficiaries or

20 others to initiate legal action to protect interests in the funds.
21 Further, the oversight board may, in its discretion, investigate the
22 actions or practices of municipal boards of trustees or of their
23 administrators or employees that, in the oversight board's
24 judgment, have the potential to threaten the security or fiscal
25 integrity of the pension funds, and the boards of trustees,
26 administrators and employees shall cooperate with the oversight
27 board in any investigation. Regardless of whether it has
28 previously conducted an investigation, the oversight board may
29 initiate or intervene in legal actions to challenge or prevent any
30 action or practice which, in the oversight board's judgment, has
31 the potential to threaten the security or fiscal integrity of the
32 pension funds. Establishment of the oversight board does not
33 relieve the municipal funds' boards of trustees from their
34 fiduciary and other duties to the funds, nor does it create any
35 liability for the funds on the part of the state. The failure of the
36 oversight board to investigate or initiate legal actions regarding
37 the actions or practices of municipal boards of trustees, their
38 administrators or employees does not render the oversight board
39 liable for the actions or practices. Members and employees of the
40 oversight board are not liable personally, either jointly or
41 severally, for debts or obligations of the municipal pension and
42 relief funds. Except as otherwise provided herein, members and
43 employees of the oversight board have a fiduciary duty toward
44 the municipal pension and relief funds and are liable for
45 malfeasance or gross negligence. Employees of the oversight
46 board are classified-exempt state employees.

47 (2) The oversight board shall consist of nine members. The
48 Executive Director of the state's Investment Management Board
49 and the Executive Director of the state's Consolidated Public
50 Retirement Board, or their designees, shall serve as voting ex
51 officio members. The other seven members shall be citizens of
52 the state who have been qualified electors of the state for a
53 period of at least one year next preceding their appointment and
54 shall be as follows: An active or retired member of a Municipal

55 Policemen's Pension and Relief Fund chosen from a list of three
56 persons submitted to the Governor by the state's largest
57 professional municipal police officers organization, an active or
58 retired member of a Municipal Firemen's Pension and Relief
59 Fund chosen from a list of three persons submitted to the
60 Governor by the state's largest professional firefighters
61 organization, an attorney experienced in finance and investment
62 matters related to pensions management, two persons
63 experienced in pension funds management, one person who is a
64 certified public accountant experienced in auditing and one
65 person chosen from a list of three persons submitted to the
66 Governor by the state's largest association of municipalities.

67 (3) On the effective date of the enactment of this section as
68 amended during the fourth extraordinary session of the
69 Legislature in 2009, the Governor shall forthwith appoint the
70 members, with the advice and consent of the Senate. The
71 Governor may remove any member from the oversight board for
72 neglect of duty, incompetency or official misconduct.

73 (b) The oversight board has the power to:

74 (1) Enter into contracts, to sue and be sued, to implead and
75 be impleaded;

76 (2) Promulgate and enforce bylaws and rules for the
77 management and conduct of its affairs;

78 (3) Maintain accounts and invest those funds which the
79 oversight board is charged with receiving and distributing;

80 (4) Make, amend and repeal bylaws, rules and procedures
81 consistent with the provisions of this article and chapter
82 thirty-three of this code;

83 (5) Notwithstanding any other provision of law, retain or
84 employ, fix compensation, prescribe duties and pay expenses of

85 legal, accounting, financial, investment, management and other
86 staff, advisors or consultants as it considers necessary, including
87 the hiring of legal counsel and actuary; and

88 (6) Do all things necessary and appropriate to implement and
89 operate the board in performance of its duties. Expenses shall be
90 paid from the moneys in the Municipal Pensions Security Fund
91 created in section eighteen-b of this article or, prior to the
92 transition provided in section eighteen-b of this article, the
93 Municipal Pensions and Protection Fund: *Provided*, That the
94 board may request special appropriation for special projects. The
95 oversight board is exempt from provisions of article three,
96 chapter five-a of this code for the purpose of contracting for
97 actuarial services, including the services of a reviewing actuary.

98 (c) Except for ex officio members, the terms of oversight
99 board members shall be staggered initially from January 1, 2010.
100 The Governor shall appoint initially one member for a term of
101 one year, one member for a term of two years, two members for
102 terms of three years, one member for a term of four years and
103 two members for terms of five years. Subsequent appointments
104 shall be for terms of five years. A member serving two full
105 consecutive terms may not be reappointed for one year after
106 completion of his or her second full term. Each member shall
107 serve until that member's successor is appointed and qualified.
108 Any member may be removed by the Governor in case of
109 incompetency, neglect of duty, gross immorality or malfeasance
110 in office. Any vacancy on the oversight board shall be filled by
111 appointment by the Governor for the balance of the unexpired
112 term.

113 (d) A majority of the full authorized membership of the
114 oversight board constitutes a quorum. The board shall meet at
115 least quarterly each year, but more often as duties require, at
116 times and places that it determines. The oversight board shall
117 elect a chairperson and a vice chairperson from their

118 membership who shall serve for terms of two years and shall
119 select annually a secretary/treasurer who may be either a
120 member or employee of the board. The oversight board shall
121 employ an executive director and other staff as needed and shall
122 fix their duties and compensation. The compensation of the
123 executive director shall be subject to approval of the Governor.
124 Except for any special appropriation as provided in subsection
125 (b) of this section, all personnel and other expenses of the board
126 shall be paid from revenue collected and allocated for municipal
127 policemen's or municipal firemen's pension and relief funds
128 pursuant to section fourteen-d, article three, chapter thirty-three
129 of this code and distributed through the Municipal Pensions and
130 Protection Fund or the Municipal Pensions Security Fund created
131 in section eighteen-b of this article. Expenses during the initial
132 year of the board's operation shall be from proceeds of the
133 allocation for the municipal pensions and relief funds.
134 Expenditures in years thereafter shall be by appropriation from
135 the Municipal Pensions Security Fund. Money allocated for
136 municipal policemen's and firemen's pension and relief funds to
137 be distributed from the Municipal Pensions and Protection Fund
138 or the Municipal Pensions Security Fund shall be first allocated
139 to pay expenses of the oversight board and the remainder in the
140 fund distributed among the various municipal pension and relief
141 funds as provided in section fourteen-d, article three, chapter
142 thirty-three of this code. The board is exempt from the
143 provisions of sections seven and eleven, article three, chapter
144 twelve of this code relating to compensation and expenses of
145 members, including travel expenses.

146 (e) Members of the oversight board shall serve the board
147 without compensation for their services: *Provided*, That no
148 public employee member may suffer any loss of salary or wages
149 on account of his or her service on the board. Each member of
150 the board shall be reimbursed, on approval of the board, for any
151 necessary expenses actually incurred by the member in carrying

152 out his or her duties. All reimbursement of expenses shall be
153 paid out of the Municipal Pensions Security Fund.

154 (f) The board may contract with other state boards or state
155 agencies to share offices, personnel and other administrative
156 functions as authorized under this article: *Provided*, That no
157 provision of this subsection may be construed to authorize the
158 board to contract with other state boards or state agencies to
159 otherwise perform the duties or exercise the responsibilities
160 imposed on the board by this code.

161 (g) The board shall propose rules for legislative approval in
162 accordance with the provisions of article three, chapter
163 twenty-nine-a of this code as necessary to implement the
164 provisions of this article, and may initially promulgate
165 emergency rules pursuant to the provisions of section fifteen,
166 article three, chapter twenty-nine-a of this code.

167 (h) The oversight board shall report annually to the
168 Legislature's Joint Committee on Government and Finance and
169 the Joint Committee on Pensions and Retirement concerning the
170 status of municipal policemen's and firemen's pension and relief
171 funds and shall present recommendations for strengthening and
172 protecting the funds and the benefit interests of the funds'
173 members.

174 (i) The oversight board shall cooperate with the West
175 Virginia Investment Management Board and the Board of
176 Treasury Investments to educate members of the local pension
177 boards of trustees on the services offered by the two state
178 investment boards. No later than October 31, 2013, the board
179 shall report to the Joint Committee on Government and Finance
180 and the Joint Committee on Pensions and Retirement a detailed
181 comparison of returns on long-term investments of moneys held
182 by or allocated to municipal pension and relief funds managed
183 by the West Virginia Investment Management Board and those

184 managed by others than the Investment Management Board. The
185 oversight board shall also report at that time on short-term
186 investment returns by local pension boards using the West
187 Virginia Board of Treasury Investments compared to short-term
188 investment returns by those local boards of trustees not using the
189 Board of Treasury Investments.

190 (j) The oversight board shall establish minimum
191 requirements for training to be completed by each member of the
192 board of trustees of a Municipal Policemen's or Firemen's
193 Pension and Relief Fund. The requirements should include, but
194 not be limited to, training in ethics, fiduciary duty and
195 investment responsibilities.

**§8-22-18c. Notice of legal actions by or against municipal
policemen's and firemen's pension funds.**

1 In any legal action in which a municipal policemen's or
2 firemen's pension and relief fund, or the fund's board of trustees,
3 employee or administrator, is named as a party, the plaintiff or
4 petitioner shall serve a copy of the complaint or petition upon the
5 oversight board by certified mail, return receipt requested, within
6 seven days of filing the legal action. Until proof of service is
7 filed with the clerk of the court in which the action was filed,
8 and for sixty days after the filing of the proof of service, no order
9 may be entered by the court that directly or indirectly requires
10 the expenditure or other disposition of pension funds or that
11 determines the eligibility or entitlement of any member to any
12 pension benefit payable from the pension and relief fund:
13 *Provided*, That the court may enter such temporary or interim
14 orders as may be needed to preserve and protect the assets of the
15 fund. In any legal action involving a municipal policemen's or
16 firemen's pension and relief fund the oversight board is entitled
17 to intervene for the purpose of preserving the security or fiscal
18 integrity of the pension fund.

§8-22-19a. Refunds of member contributions.

1 After January 1, 2010, any member of a paid police
2 department or fire department who is removed or discharged or
3 who before retirement on any retirement pension or disability
4 pension severs his or her connection with said department,
5 whether or not consecutive, shall, upon request, be refunded all
6 pension and relief fund deductions made from the member's
7 salary or compensation, but without interest from the fund. The
8 refund shall come from the accounts which originally received
9 the member deductions. For municipalities using the
10 conservation method of funding, the member contributions are
11 to be refunded from both the Municipal Pension and Relief Fund
12 and the city benefit account, in the exact percentages that were
13 initially deposited to the respective accounts. Any member who
14 receives a refund and subsequently wishes to reenter his or her
15 department shall not be allowed to reenter the department unless
16 the police officer or firefighter repays to the pension and relief
17 fund all sums refunded to him or her in a lump sum at the date
18 of reentry, or by monthly payroll deductions within thirty-six
19 months from the date he or she reenters the department, with
20 interest at the rate of eight percent per annum. In the event such
21 refund is made prior to January 1, 1981, and such member
22 subsequently reenters the department such police officer or
23 firefighter shall be allowed membership in such pension and
24 relief fund; however, no credit may be allowed such member for
25 any former service, unless such member repays to the pension
26 and relief fund all sums refunded to the member within one year
27 from the date the member reenters the department with interest
28 at the rate of eight percent per annum: *Provided*, That for such
29 member who receives such refund prior to January 1, 1980,
30 interest may not be charged for more than three years. Any
31 probationary member of a paid police or fire department who is
32 not given an absolute appointment at the end of the member's
33 probationary period shall, upon request, be refunded all pension
34 and relief fund deductions made from the member's salary or

35 compensation, but without interest. Any member contribution
36 made in fiscal years beginning on July 1, 1981, and thereafter by
37 any members of such fund, which is in excess of the percentages,
38 required in section nineteen of this article of such member's
39 salary or compensation as defined in section sixteen of this
40 article, shall be refunded with eight percent interest to such
41 member upon completion of the calculation of the member's
42 retirement benefit.

§8-22-25. Retirement pensions.

1 (a) Any member of a paid police or fire department who is
2 entitled to a retirement pension hereunder, and who has been in
3 the honorable service of such department for twenty years, may,
4 upon written application to the board of trustees, be retired from
5 all service in such department without medical examination or
6 disability. On such retirement the board of trustees shall
7 authorize the payment of annual retirement pension benefits
8 commencing upon the member's retirement or upon the
9 member's attaining the age of fifty years, whichever is later,
10 payable in twelve monthly installments for each year of the
11 remainder of the member's life, in an amount equal to sixty
12 percent of such member's average annual salary or
13 compensation received during the three
14 twelve-consecutive-month periods of employment with such
15 department in which such member received the member's
16 highest salary or compensation while a member of the
17 department, or an amount of \$500 per month, whichever is
18 greater.

19 (b) Any member of any such department who is entitled to
20 a retirement pension under the provisions of subsection (a) of
21 this section and who has been in the honorable service of such
22 department for more than twenty years at the time of the
23 member's retirement shall receive, in addition to the sixty
24 percent authorized in said subsection (a):

25 (1) Two additional percent, to be added to the sixty percent
26 for each of the first five additional years of service completed at
27 the time of retirement in excess of twenty years of service up to
28 a maximum of seventy percent; and

29 (2) One additional percent, to be added to such maximum of
30 seventy percent, for each of the first five additional years of
31 service completed at the time of retirement in excess of
32 twenty-five years of service up to a maximum of seventy-five
33 percent.

34 The total additional credit provided for in this subsection
35 may not exceed fifteen additional percent.

36 (c) Any member of any such department whose service has
37 been interrupted by duty with the armed forces of the United
38 States as provided in section twenty-seven of this article prior to
39 July 1, 1981, shall be eligible for retirement pension benefits
40 immediately upon retirement, regardless of the member's age, if
41 the member shall otherwise be eligible for such retirement
42 pension benefits. In no event are provisions of this subsection to
43 be interpreted to permit retirement before age fifty unless the
44 interruption of the member's service by duty with the armed
45 forces of the United States actually occurred before July 1, 1981.
46 The amendment made to this subsection during the 2013 regular
47 session of the Legislature is not for the purpose of changing the
48 existing law regarding benefits provided to veterans for military
49 service prior to July 1, 1981, but to further clarify that the
50 provisions of this section and any previous enactments of this
51 section do not make a member eligible for retirement before age
52 fifty for a member's service with the armed forces of the United
53 States after July 1, 1981.

54 Any member or previously retired member of any such
55 department who has served in active duty with the armed forces
56 of the United States as described in section twenty-seven of this

57 article, whether prior to or subsequent to becoming a member of
58 a paid police or fire department covered by the provisions of this
59 article, shall receive, in addition to the sixty percent authorized
60 in subsection (a) of this section and the additional percent
61 credit authorized in subsection (b) of this section, one additional
62 percent for each year so served in active military duty, up to a
63 maximum of four additional percent. In no event, however, may
64 the total benefit granted to any member exceed seventy-five
65 percent of the member's annual average salary calculated in
66 accordance with subsection (a) of this section.

67 (d) Any member of a paid police or fire department shall be
68 retired at the age of sixty-five years in the manner provided in
69 this subsection. When a member of the paid police or fire
70 department reaches the age of sixty-five years, the said board of
71 trustees shall notify the mayor of this fact, within thirty days of
72 such member's sixty-fifth birthday. The mayor shall cause such
73 sixty-five-year-old member of the paid police or fire department
74 to retire within a period of not more than thirty additional days.
75 Upon retirement under the provisions of this subsection, such
76 member shall receive retirement pension benefits payable in
77 twelve monthly installments for each year of the remainder of
78 the member's life in an amount equal to sixty percent of such
79 member's average annual salary or compensation received
80 during the three twelve-consecutive-month periods of
81 employment with such department in which such member
82 received the member's highest salary or compensation while a
83 member of the department, or an amount of \$500 per month,
84 whichever is greater. If such member has been employed in said
85 department for more than twenty years, the provisions of
86 subsection (b) of this section shall apply.

87 (e) It shall be the duty of each member of a paid police or
88 fire department at the time a fund is hereafter established to
89 furnish the necessary proof of the member's date of birth to the
90 said board of trustees, as specified in section twenty-three of this

91 article, within a reasonable length of time, said length of time to
92 be determined by the said board of trustees. Then the board of
93 trustees and the mayor shall proceed to act in the manner
94 provided in subsection (d) of this section and shall cause all
95 members of the paid police or fire department who are over the
96 age of sixty-five years to retire in not less than sixty days from
97 the date the fund is established. Upon retirement under the
98 provisions of this subsection (e), such member, whether the
99 member has been employed in said department for twenty years
100 or not, shall receive retirement pension benefits payable in
101 twelve monthly installments for each year of the remainder of
102 the member's life in an amount equal to sixty percent of such
103 member's average annual salary or compensation received
104 during the three twelve-consecutive-month periods of
105 employment with such department in which such member
106 received the member's highest salary or compensation while a
107 member of the department, or an amount of \$500 per month,
108 whichever is greater. If such member has been employed in said
109 department for more than twenty years, the provisions of
110 subsection (b) of this section shall apply.

**ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE
OFFICERS AND FIREFIGHTERS
RETIREMENT SYSTEM.**

**§8-22A-4. Creation and administration of West Virginia
Municipal Police Officers and Firefighters
Retirement System; specification of actuarial
assumptions.**

1 There is hereby created the West Virginia Municipal Police
2 Officers and Firefighters Retirement System. The purpose of this
3 system is to provide for the orderly retirement of certain police
4 officers and firefighters who become superannuated because of
5 age or permanent disability and to provide certain survivor death
6 benefits. Substantially all of the members of the retirement

7 system shall be qualified public safety employees as defined in
8 section two of this article. The retirement system shall come into
9 effect January 1, 2010: *Provided*, That if the number of members
10 in the system are fewer than one hundred on January 1, 2017,
11 then all of the provisions of this article are void and of no force
12 and effect, and memberships in the system will be merged into
13 the Emergency Medical Services Retirement System created in
14 article five-v, chapter sixteen of this code. If merger is required,
15 the board shall take all necessary steps to see that the voluntary
16 transfers of persons and assets authorized by this article do not
17 affect the qualified status with the Internal Revenue Service of
18 either retirement plan. All business of the system shall be
19 transacted in the name of the West Virginia Municipal Police
20 Officers and Firefighters Retirement System. The board shall
21 specify and adopt all actuarial assumptions for the plan at its first
22 meeting of every calendar year or as soon thereafter as may be
23 practicable, which assumptions shall become part of the plan.

§8-22A-9. Retirement; commencement of benefits; insurance requirements during early period.

1 (a) To ensure the fiscal integrity of the retirement system
2 during the start-up phase, no member is entitled to retirement,
3 disability or death benefits under this retirement system until
4 January 1, 2017. Participating municipalities shall purchase
5 insurance for their new plan members to provide coverage in an
6 amount equal to disability coverage otherwise provided in
7 sections seventeen and eighteen of this article and death benefits
8 otherwise provided in sections twenty, twenty-two and twenty-
9 three of this article for claims arising before January 1, 2013:
10 *Provided*, That pursuant to the amendments made to this
11 subsection during the 2013 regular session of the Legislature,
12 participating municipalities shall reinstate or purchase the
13 insurance coverage for all plan members no later than July 1,
14 2013, and continue coverage through January 1, 2017.

15 (b) A member may retire and commence to receive
16 retirement income payments on the first day of the calendar
17 month following written application for his or her voluntary
18 petition for retirement coincident with or next following the later
19 of the date the member ceases employment, or the date the
20 member attains early or normal retirement age, in an amount as
21 provided under this article: *Provided*, That retirement income
22 payments under this plan are subject to the provisions of this
23 article. On receipt of the petition, the board shall promptly
24 provide the member with an explanation of his or her optional
25 forms of retirement benefits and on receipt of properly executed
26 forms from the member, the board shall process a member's
27 request for and commence payments as soon as administratively
28 feasible.

CHAPTER 139

**(H. B. 2956 - By Delegates Miley, Boggs, Manchin,
Marcum, Ferro, Reynolds and Ashley)**

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §11-16-3 and §11-16-6 of the Code of West Virginia, 1931, as amended, all relating to nonintoxicating beer distributorships and their licenses, resident brewers and brewpubs; expanding the definition of "person" for purposes of holding a nonintoxicating beer distributorship; allowing individuals, forms, trusts, partnerships, limited partnerships, limited liability companies, associations and corporations to hold a distributor's license; clarifying and amending applicable definitions; clarifying certain requirements and operations relating to distribution and sales at brewpubs; allowing for the limited sale

of nonintoxicating beer and nonintoxicating craft beer by brewpubs for personal consumption off premises and not for resale; amending definition of resident brewers; placing limit on amount of non-intoxicating beer and non-intoxicating craft beer that a resident brewer may self-distribute; prohibiting addition or infusion of non-intoxicating beer or non-intoxicating craft beer with caffeine or any additives masking or altering alcohol effect.

Be it enacted by the Legislature of West Virginia:

That §11-16-3 and §11-16-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

1 For the purpose of this article, except where the context
2 clearly requires differently:

3 (1) “Brewer” or “manufacturer” means any person, firm,
4 association, partnership or corporation manufacturing, brewing,
5 mixing, concocting, blending, bottling or otherwise producing or
6 importing or transshipping from a foreign country
7 nonintoxicating beer or nonintoxicating craft beer for sale at
8 wholesale to any licensed distributor.

9 (2) “Brewpub” means a place of manufacture of
10 nonintoxicating beer owned by a resident brewer, subject to
11 federal and state regulations and guidelines, a portion of which
12 premises are designated for retail sales of nonintoxicating beer
13 or nonintoxicating craft beer by the resident brewer owning the
14 brewpub.

15 (3) “Class A retail license” means a retail license permitting
16 the retail sale of liquor at a freestanding liquor retail outlet
17 licensed pursuant to chapter sixty of this code.

18 (4) “Commissioner” means the West Virginia Alcohol
19 Beverage Control Commissioner.

20 (5) “Distributor” means and includes any person jobbing or
21 distributing nonintoxicating beer or nonintoxicating craft beer to
22 retailers at wholesale and whose warehouse and chief place of
23 business shall be within this state. For purposes of a distributor
24 only, the term “person” means and includes an individual, firm,
25 trust, partnership, limited partnership, limited liability company,
26 association or corporation. Any trust licensed as a distributor or
27 any trust that is an owner of a distributor licensee, and the trustee
28 or other persons in active control of the activities of the trust
29 relating to the distributor license, is liable for acts of the trust or
30 its beneficiaries relating to the distributor license that are
31 unlawful acts or violations of article eleven of this chapter
32 notwithstanding the liability of trustees in article ten, chapter
33 forty-four-d of this code.

34 (6) “Freestanding liquor retail outlet” means a retail outlet
35 that sells only liquor, beer, nonintoxicating beer and other
36 alcohol-related products, as defined pursuant to section four,
37 article three-a, chapter sixty of this code.

38 (7) “Growler” means a glass ceramic or metal container or
39 jug, capable of being securely sealed, utilized by a brewpub for
40 purposes of off-premise sales of nonintoxicating beer or
41 nonintoxicating craft beer for personal consumption not on a
42 licensed premise and not for resale.

43 (8) “Nonintoxicating beer” means all natural cereal malt
44 beverages or products of the brewing industry commonly
45 referred to as beer, lager beer, ale and all other mixtures and
46 preparations produced by the brewing industry, including malt
47 coolers and nonintoxicating craft beers with no caffeine infusion
48 or any additives masking or altering the alcohol effect containing
49 at least one half of one percent alcohol by volume, but not more

50 than nine and six-tenths of alcohol by weight, or twelve percent
51 by volume, whichever is greater. The word "liquor" as used in
52 chapter sixty of this code does not include or embrace
53 nonintoxicating beer nor any of the beverages, products,
54 mixtures or preparations included within this definition.

55 (9) "Nonintoxicating beer sampling event" means an event
56 approved by the commissioner for a Class A retail Licensee to
57 hold a nonintoxicating beer sampling authorized pursuant to
58 section eleven-a of this article.

59 (10) "Nonintoxicating beer sampling day" means any days
60 and hours of the week where Class A retail licensees may sell
61 nonintoxicating beer pursuant to sub-section (a)(1), section
62 eighteen of this article, and is approved, in writing, by the
63 commissioner to conduct a nonintoxicating beer sampling event.

64 (11) "Nonintoxicating craft beer" means any beverage
65 obtained by the natural fermentation of barley, malt, hops or any
66 other similar product or substitute and containing not less than
67 one half of one percent by volume and not more than twelve
68 percent alcohol by volume or nine and six-tenths percent alcohol
69 by weight with no caffeine infusion or any additives masking or
70 altering the alcohol effect.

71 (12) "Original container" means the container used by the
72 brewer at the place of manufacturing, bottling or otherwise
73 producing nonintoxicating beer for sale at wholesale.

74 (13) "Person" means and includes an individual, firm,
75 partnership, limited partnership, limited liability company,
76 association or corporation.

77 (14) "Resident brewer" means any brewer or manufacturer
78 of non-intoxicating beer or non-intoxicating craft beer whose
79 principal place of business and manufacture is located in the
80 State of West Virginia and which does not brew or manufacture

81 more than 25,000 barrels of non-intoxicating beer or non-
82 intoxicating craft beer annually, and does not self-distribute
83 more than 10,000 barrels thereof in the State of West Virginia
84 annually.

85 (15) "Retailer" means any person selling, serving, or
86 otherwise dispensing nonintoxicating beer and all products
87 regulated by this article, including, but not limited to, malt
88 coolers at his or her established and licensed place of business.

89 (16) "Tax Commissioner" means the Tax Commissioner of
90 the State of West Virginia or the commissioner's designee.

**§11-16-6. License in one capacity only; no connection between
different licensees; when brewer may act as
distributor; credit and rebates proscribed; brewpub.**

1 (a) No person shall be licensed in more than one capacity
2 under the terms of this article, and there shall be no connection
3 whatsoever between any retailer, distributor, resident brewer or
4 brewer, and no person shall be interested directly or indirectly
5 through the ownership of corporate stock, membership in a
6 partnership, or in any other way in the business of a retailer, if
7 such person is at the same time interested in the business of a
8 brewer, resident brewer or distributor. A resident brewer may act
9 as distributor in a limited capacity for his or her own product
10 from such resident brewery, place of manufacture or bottling, but
11 a resident brewer is not permitted to act as a distributor as
12 defined in section three of this article: *Provided*, That nothing in
13 this article may prevent a resident brewer from using the services
14 of licensed distributors as specified in this article. A resident
15 brewer or distributor may sell to a consumer for personal use and
16 not for resale, draught beer in quantities of one-eighth, one-
17 fourth and one-half barrels in the original containers. A resident
18 brewer owning a brewpub may sell nonintoxicating beer or
19 nonintoxicating craft beer produced by the brewpub in a sealed

20 growler, cans or bottles for personal consumption off of a
21 licensed premise and not for resale.

22 (b) It is unlawful for any brewer, resident brewer,
23 manufacturer or distributor to assist any retailer or for any
24 retailer to accept assistance from any brewer, manufacturer or
25 distributor any gifts or loans or forbearance of money or
26 property of any kind, nature or description, or other thing of
27 value or by the giving of any rebates or discounts of any kind
28 whatsoever except as may be permitted by rule, regulation, or
29 order promulgated by the commissioner in accordance with this
30 article.

31 Notwithstanding paragraphs (a) and (b) above, a brewpub
32 may offer for retail sale nonintoxicating beer or nonintoxicating
33 craft beer so long as the sale of the nonintoxicating beer or
34 nonintoxicating craft beer is limited to the brewpub premises,
35 except for up to two growlers per customer for personal
36 consumption off of a licensed premises and not for resale.

CHAPTER 140

(Com. Sub. for S. B. 172 - By Senator Kessler (Mr. President))

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact § 11-16-3 and § 11-16-8 of the Code of West Virginia, 1931, as amended, all relating to the Nonintoxicating Beer Act generally; defining terms; expanding the definition of “person” for purposes of holding a nonintoxicating beer distributorship; allowing trusts, limited liability companies and associations to hold a distributor’s license; and requiring

certain disclosures by applicants that are trusts, limited liability companies or associations.

Be it enacted by the Legislature of West Virginia:

That §11-16-3 and §11-16-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

1 For the purpose of this article, except where the context
2 clearly requires differently:

3 (1) "Brewer" or "manufacturer" means any person, firm,
4 association, partnership or corporation manufacturing, brewing,
5 mixing, concocting, blending, bottling or otherwise producing or
6 importing or transshipping from a foreign country
7 nonintoxicating beer or nonintoxicating craft beer for sale at
8 wholesale to any licensed distributor.

9 (2) "Brewpub" means a place of manufacture of
10 nonintoxicating beer owned by a resident brewer, subject to
11 federal and state regulations and guidelines, a portion of which
12 premises are designated for retail sales of nonintoxicating beer
13 or nonintoxicating craft beer by the resident brewer owning the
14 brewpub.

15 (3) "Class A retail license" means a retail license permitting
16 the retail sale of liquor at a freestanding liquor retail outlet
17 licensed pursuant to chapter sixty of this code.

18 (4) "Commissioner" means the West Virginia Alcohol
19 Beverage Control Commissioner.

20 (5) "Distributor" means and includes any person jobbing or
21 distributing nonintoxicating beer or nonintoxicating craft beer to
22 retailers at wholesale and whose warehouse and chief place of

23 business shall be within this state. For purposes of a distributor
24 only, the term “person” means and includes an individual, firm,
25 trust, partnership, limited partnership, limited liability company,
26 association or corporation. Any trust licensed as a distributor or
27 any trust that is an owner of a distributor licensee, and the trustee
28 or other persons in active control of the activities of the trust
29 relating to the distributor license, is liable for acts of the trust or
30 its beneficiaries relating to the distributor license that are
31 unlawful acts or violations of article eleven of this chapter
32 notwithstanding the liability of trustees in article ten, chapter
33 forty-four-d of this code.

34 (6) “Freestanding liquor retail outlet” means a retail outlet
35 that sells only liquor, beer, nonintoxicating beer and other
36 alcohol-related products, as defined pursuant to section four,
37 article three-a, chapter sixty of this code.

38 (7) “Growler” means a glass ceramic or metal container or
39 jug, capable of being securely sealed, utilized by a brewpub for
40 purposes of off-premise sales of nonintoxicating beer or
41 nonintoxicating craft beer for personal consumption not on a
42 licensed premise and not for resale.

43 (8) “Nonintoxicating beer” means all natural cereal malt
44 beverages or products of the brewing industry commonly
45 referred to as beer, lager beer, ale and all other mixtures and
46 preparations produced by the brewing industry, including malt
47 coolers and nonintoxicating craft beers with no caffeine infusion
48 or any additives masking or altering the alcohol effect containing
49 at least one half of one percent alcohol by volume, but not more
50 than nine and six-tenths of alcohol by weight, or twelve percent
51 by volume, whichever is greater. The word “liquor” as used in
52 chapter sixty of this code does not include or embrace
53 nonintoxicating beer nor any of the beverages, products,
54 mixtures or preparations included within this definition.

55 (9) “Nonintoxicating beer sampling event” means an event
56 approved by the commissioner for a Class A retail licensee to

57 hold a nonintoxicating beer sampling authorized pursuant to
58 section eleven-a of this article.

59 (10) "Nonintoxicating beer sampling day" means any days
60 and hours of the week where Class A retail licensees may sell
61 nonintoxicating beer pursuant to subdivision (1), subsection (a),
62 section eighteen of this article and is approved, in writing, by the
63 commissioner to conduct a nonintoxicating beer sampling event.

64 (11) "Nonintoxicating craft beer" means any beverage
65 obtained by the natural fermentation of barley, malt, hops or any
66 other similar product or substitute and containing not less than
67 one half of one percent by volume and not more than twelve
68 percent alcohol by volume or nine and six-tenths percent alcohol
69 by weight with no caffeine infusion or any additives masking or
70 altering the alcohol effect.

71 (12) "Original container" means the container used by the
72 brewer at the place of manufacturing, bottling or otherwise
73 producing nonintoxicating beer for sale at wholesale.

74 (13) "Person" means and includes an individual, firm,
75 partnership, limited partnership, limited liability company,
76 association or corporation.

77 (14) "Resident brewer" means any brewer or manufacturer
78 of nonintoxicating beer or nonintoxicating craft beer whose
79 principal place of business and manufacture is located in the
80 State of West Virginia and which does not brew or manufacture
81 more than twenty-five thousand barrels of non-intoxicating beer
82 or nonintoxicating craft beer annually, and does not self-
83 distribute more than ten thousand barrels thereof in the State of
84 West Virginia annually.

85 (15) "Retailer" means any person selling, serving, or
86 otherwise dispensing nonintoxicating beer and all products
87 regulated by this article, including, but not limited to, malt
88 coolers at his or her established and licensed place of business.

89 (16) "Tax Commissioner" means the Tax Commissioner of
90 the State of West Virginia or the commissioner's designee.

§11-16-8. Form of application for license; fee and bond; refusal of license.

1 (a) A license may be issued by the commissioner to any
2 person who submits an application, accompanied by a license fee
3 and, where required, a bond, and states under oath:

4 (1) The name and residence of the applicant, the duration of
5 such residency, that the applicant has been a resident of the state
6 for a period of two years preceding the date of the application
7 and that the applicant is twenty-one years of age. If the applicant
8 is a firm, association, partnership, limited partnership, limited
9 liability company or corporation, the application shall include
10 the residence of the members or officers for a period of two
11 years preceding the date of such application. If a person, firm,
12 partnership, limited partnership, limited liability company,
13 association, corporation or trust applies for a license as a
14 distributor, such person, or in the case of a firm, partnership,
15 limited partnership, limited liability company, association or
16 trust, the members, officers, trustees or other persons in active
17 control of the activities of the limited liability company,
18 association or trust relating to the license, shall state under oath
19 that each has been a bona fide resident of the state for four years
20 preceding the date of such application. If the applicant is a trust
21 or has a trust as an owner, the trustees or other persons in active
22 control of the activities of the trust relating to the license shall
23 provide a certification of trust as described in section one
24 thousand thirteen, article ten, chapter forty-four-d of this code.
25 This certification of trust shall include the excerpts described in
26 subsection (e), section one thousand thirteen, article ten, chapter
27 forty-four-d of this code and shall further state, under oath, the
28 names, addresses, Social Security numbers and birth dates of the
29 beneficiaries of the trust and certify that the trustee and
30 beneficiaries are twenty-one years of age or older. If a

31 beneficiary is not twenty-one years of age, the certification of
32 trust must state that such beneficiary's interest in the trust is
33 represented by a trustee, parent or legal guardian who is twenty-
34 one years of age and who will direct all actions on behalf of such
35 beneficiary related to the trust with respect to the distributor until
36 the beneficiary is twenty-one years of age. Any beneficiary who
37 is not twenty-one years of age or older shall have his or her
38 trustee, parent or legal guardian include in the certification of
39 trust and state under oath his or her name, address, Social
40 Security number and birth date.

41 (2) The place of birth of applicant, that he or she is a citizen
42 of the United States and of good moral character and, if a
43 naturalized citizen, when and where naturalized. If the applicant
44 is a corporation organized or authorized to do business under the
45 laws of the state, the application must state when and where
46 incorporated, the name and address of each officer and that each
47 officer is a citizen of the United States and a person of good
48 moral character. If the applicant is a firm, association, limited
49 liability company, partnership, limited partnership, trust or has
50 a trust as an owner, the application shall provide the place of
51 birth of each member of the firm, association, limited liability
52 company, partnership or limited partnership and of the trustees,
53 beneficiaries or other persons in active control of the activities
54 of the trust relating to the license and that each member or
55 trustee, beneficiary or other persons in active control of the
56 activities of the trust relating to the license is a citizen of the
57 United States and if a naturalized citizen, when and where
58 naturalized, each of whom must qualify and sign the application.
59 The requirements as to residence do not apply to the officers of
60 a corporation applying for a retailer's license but the officers,
61 agent or employee who manages and is in charge of the licensed
62 premises shall possess all of the qualifications required of an
63 individual applicant for a retailer's license including the
64 requirement as to residence;

65 (3) The particular place for which the license is desired and
66 a detailed description thereof;

67 (4) The name of the owner of the building and, if the owner
68 is not the applicant, that the applicant is the actual and bona fide
69 lessee of the premises;

70 (5) That the place or building in which is proposed to do
71 business conforms to all applicable laws of health, fire and
72 zoning regulations and is a safe and proper place or building not
73 within three hundred feet of a school or church measured from
74 front door to front door, along the street or streets. This
75 requirement does not apply to a Class B license or to a place
76 occupied by a beer licensee so long as it is continuously so
77 occupied. The prohibition against locating a proposed business
78 in a place or building within three hundred feet of a school does
79 not apply to a college or university that has notified the
80 commissioner, in writing, that it has no objection to the location
81 of a proposed business in a place or building within three
82 hundred feet of the college or university;

83 (6) That the applicant is not incarcerated and has not during
84 the five years preceding the date of said application been
85 convicted of a felony;

86 (7) That the applicant is the only person in any manner
87 pecuniarily interested in the business so asked to be licensed and
88 that no other person is in any manner pecnniarily interested
89 during the continuance of the license; and

90 (8) That the applicant has not during five years preceding the
91 date of the application had a nonintoxicating beer license
92 revoked.

93 (b) In the case of an applicant that is trust or has a trust as an
94 owner, a distributor license may be issued only upon submission
95 by the trustees or other persons in active control of the activities
96 of the trust relating to the distributor license of a true and correct
97 copy of the written trust instrument to the commissioner for his

98 or her review. Notwithstanding any provision of law to the
99 contrary, the copy of the written trust instrument submitted to
100 the commissioner pursuant to this section is confidential and is
101 not a public record and is not available for release pursuant to
102 the West Virginia Freedom of Information Act codified in article
103 one, chapter twenty-nine-b of this code.

104 (c) The provisions and requirements of subsection (a) of this
105 section are mandatory prerequisites for the issuance and if any
106 applicant fails to qualify, the license shall be refused. In addition
107 to the information furnished in any application, the
108 commissioner may make such additional and independent
109 investigation of each applicant and of the place to be occupied
110 as necessary or advisable and, for this reason, all applications,
111 with license fee and bond, must be filed thirty days prior to the
112 beginning of any fiscal year. If the application is for an
113 unexpired portion of a fiscal year, the issuance of license may be
114 withheld for such reasonable time as necessary for investigation.

115 (d) The commissioner may refuse a license to any applicant
116 under the provisions of this article if the commissioner is of the
117 opinion:

118 (1) That the applicant is not a suitable person to be licensed;

119 (2) That the place to be occupied by the applicant is not a
120 suitable place or is within three hundred feet of any school or
121 church measured from front door to front door along the street
122 or streets. This requirement does not apply to a Class B licensee
123 or to a place now occupied by a beer licensee so long as it is
124 continuously so occupied. The prohibition against locating any
125 such place within three hundred feet of a school does not apply
126 to a college or university that has notified the commissioner, in
127 writing, that it has no objection to the location of any such place
128 within three hundred feet; or

129 (3) That the license should not be issued for reason of
130 conduct declared to be unlawful by this article.

CHAPTER 141

(Com. Sub. for H. B. 3145 - By Delegates Miley,
Manchin, Ferro, Wells and Skinner)

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 1, 2013.]

AN ACT to amend and reenact § 11-16-9 of the Code of West Virginia, 1931, as amended, relating to sales of nonintoxicating beer; and removing the existing maximum quantities of beer that retailers can sell for off premises consumption.

Be it enacted by the Legislature of West Virginia:

That § 11-16-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of nonintoxicating beer permitted; distributors; brewers; brewpubs.

1 There is levied and imposed an annual license tax upon all
2 dealers in and of nonintoxicating beer as defined by this article,
3 which license period begins on July 1, of each year and ends on
4 June 30 of the following year, and, if granted for a less period,
5 it shall be computed semiannually in proportion to the remainder
6 of the fiscal year as follows:

7 (1) Retail dealers shall be divided into two classes, Class A
8 and Class B. In the case of a Class A retail dealer the license fee
9 is \$150 for each place of business; the license fee for social,
10 fraternal or private clubs not operating for profit, and having
11 been in continuous operation for two years or more immediately

12 preceding the date of application, is \$150: *Provided*, That
13 railroads operating in this state may dispense nonintoxicating
14 beer upon payment of an annual license tax of \$10 for each
15 dining, club or buffet car in which the beer is dispensed.

16 Class A licenses issued for railroad dining, club or buffet
17 cars authorize the licensee to sell nonintoxicating beer at retail
18 for consumption only on the licensed premises where sold. All
19 other Class A licenses authorize the licensee to sell
20 nonintoxicating beer at retail for consumption on or off the
21 licensed premises.

22 In the case of a Class B retailer, the fee for a Class B license
23 authorizing the sale of both chilled and unchilled beer is \$150 for
24 each place of business. A Class B license authorizes the licensee
25 to sell nonintoxicating beer at retail in bottles, cans or other
26 sealed containers only, and only for consumption off the licensed
27 premises. A Class B retailer may sell to a consumer, for personal
28 use and not for resale, draught beer in quantities of one-eighth,
29 one-fourth and one-half barrels in the original containers.

30 A Class B license may be issued only to the proprietor or
31 owner of a grocery store. For the purpose of this article the term
32 "grocery store" means and includes any retail establishment
33 commonly known as a grocery store or delicatessen and caterer
34 or party supply store, where food or food products are sold for
35 consumption off the premises, and means a separate and
36 segregated portion of any other retail store which is dedicated
37 solely to the sale of food, food products and supplies for the
38 table for consumption off the premises. The commissioner may
39 propose for legislative approval legislative rules pursuant to
40 chapter twenty-nine-a of this code necessary to carry this
41 provision into effect. Caterers or party supply stores are required
42 to purchase the appropriate licenses from the alcohol beverage
43 control administration.

44 (2) In the case of distributors, the license fee is \$1,000 for
45 each place of business.

46 (3) In the case of a brewer with its principal place of
47 business located in this state, the license fee is \$1,500 for each
48 place of manufacture.

49 (4) In the case of a brewpub, the license fee is \$1,000 for
50 each place of manufacture.

CHAPTER 142

(Com. Sub. for S. B. 101 - By Senators McCabe,
Cann, Miller, Jenkins and Barnes)

[Passed April 13, 2013; in effect July 1, 2013.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §16-5C-15 of the Code of West Virginia, 1931, as amended, relating to clarifying that the Medical Professional Liability Act applies to nursing homes and their health care providers.

Be it enacted by the Legislature of West Virginia:

That §16-5C-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5C. NURSING HOMES.

§16-5C-15. Unlawful acts; penalties; injunctions; private right of action.

1 (a) Whoever advertises, announces, establishes or maintains,
2 or is engaged in establishing or maintaining a nursing home
3 without a license granted under section six of this article, or who
4 prevents, interferes with or impedes in any way the lawful
5 enforcement of this article is guilty of a misdemeanor and, upon
6 conviction thereof, shall be punished for the first offense by a

7 fine of not more than \$100, or by confinement in jail for a period
8 of not more than ninety days, or by both fine and confinement,
9 at the discretion of the court. For each subsequent offense, the
10 fine may be increased to not more than \$250, with confinement
11 in jail for a period of not more than ninety days, or by both fine
12 and confinement, at the discretion of the court. Each day of a
13 continuing violation after conviction is considered a separate
14 offense.

15 (b) The director may in his or her discretion bring an action
16 to enforce compliance with this article or any rule or order
17 hereunder whenever it appears to the director that any person has
18 engaged in, or is engaging in, an act or practice in violation of
19 this article or any rule or order hereunder, or whenever it appears
20 to the director that any person has aided, abetted or caused, or is
21 aiding, abetting or causing, such an act or practice. Upon
22 application by the director, the circuit court of the county in
23 which the conduct has occurred or is occurring, or if emergency
24 circumstances occur the circuit court of Kanawha County, has
25 jurisdiction to grant without bond a permanent or temporary
26 injunction, decree or restraining order.

27 Whenever the director has refused to grant or renew a
28 license, or has revoked a license required by law to operate or
29 conduct a nursing home, or has ordered a person to refrain from
30 conduct violating the rules of the director, and the person has
31 appealed the action of the director, the court may, during
32 pendency of the appeal, issue a restraining order or injunction
33 upon proof that the operation of the nursing home or its failure
34 to comply with the order of the director adversely affects the
35 well being or safety of the residents of the nursing home. Should
36 a person who is refused a license or the renewal of a license to
37 operate or conduct a nursing home or whose license to operate
38 is revoked or who has been ordered to refrain from conduct or
39 activity which violates the rules of the director fails to appeal or
40 should the appeal be decided favorably to the director, then the
41 court shall issue a permanent injunction upon proof that the
42 person is operating or conducting a nursing home without a

43 license as required by law, or has continued to violate the rules
44 of the director.

45 (c) Any nursing home that deprives a resident of any right or
46 benefit created or established for the well-being of this resident
47 by the terms of any contract, by any state statute or rule, or by
48 any applicable federal statute or regulation, shall be liable to the
49 resident for injuries suffered as a result of such deprivation.
50 Upon a finding that a resident has been deprived of such a right
51 or benefit, and that the resident has been injured as a result of
52 such deprivation, and unless there is a finding that the nursing
53 home exercised all care reasonably necessary to prevent and
54 limit the deprivation and injury to the resident, compensatory
55 damages shall be assessed in an amount sufficient to compensate
56 the resident for such injury. In addition, where the deprivation of
57 the right or benefit is found to have been willful or in reckless
58 disregard of the lawful rights of the resident, punitive damages
59 may be assessed. A resident may also maintain an action
60 pursuant to this section for any other type of relief, including
61 injunctive and declaratory relief, permitted by law. Exhaustion
62 of any available administrative remedies is not required prior to
63 commencement of suit under this subsection.

64 (d) The amount of damages recovered by a resident, in an
65 action brought pursuant to this section, is exempt for purposes of
66 determining initial or continuing eligibility for medical
67 assistance under article four, chapter nine of this code, and may
68 neither be taken into consideration nor required to be applied
69 toward the payment or part payment of the cost of medical care
70 or services available under that article.

71 (e) Any waiver by a resident or his or her legal
72 representative of the right to commence an action under this
73 section, whether oral or in writing, is void as contrary to public
74 policy.

75 (f) The penalties and remedies provided in this section are
76 cumulative and are in addition to all other penalties and remedies
77 provided by law.

78 (g) Nothing in this section or any other section of the code
79 shall limit the protections afforded nursing homes or their health
80 care providers under article seven-b, chapter fifty-five of this
81 code. Nursing homes and their health care providers shall be
82 treated in the same manner as any other health care facility or
83 health care provider under article seven-b, chapter fifty-five of
84 this code. The terms “health care facility” and “health care
85 provider” as used in this subsection shall have the same meaning
86 as set forth in subsections (f) and (g), section two, article seven-
87 b, chapter fifty-five of this code.

88 (h) The amendments to this section enacted during the 2013
89 Regular Session of the Legislature shall be effective July 1,
90 2013; *Provided*. That there shall be no inference, either positive
91 or negative, to any legal action pending pursuant to this section
92 as of July 1, 2013. The amendments to this section in 2013 are
93 not in any way intended to modify, change, expand or contract
94 the Medical Professional Liability Act. The proper construction
95 of this section and the limitations and provisions of article seven-
96 b, chapter fifty-five of this code shall be determined by
97 principles of statutory construction.

CHAPTER 143

**(Com. Sub. for H. B. 2747 - By Delegates Morgan,
Stephens, Caputo and Craig)**

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §6-9A-2 and §6-9A-3 of the Code of West Virginia, 1931, as amended, all relating to public notice of meetings of governing bodies of public agencies; defining terms; clarifying existing notice requirements; requiring state executive

branch agencies to electronically file public meeting notices with the Secretary of State for publication on Secretary of State's website; eliminating the requirement that state executive branch agency meeting notices be filed in the State Register; and providing procedural rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §6-9A-2 and §6-9A-3 of the Code of the West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

§6-9A-2. Definitions.

1 As used in this article:

2 (1) "Decision" means any determination, action, vote or final
3 disposition of a motion, proposal, resolution, order, ordinance or
4 measure on which a vote of the governing body is required at
5 any meeting at which a quorum is present.

6 (2) "Emergency meeting" means any meeting called by a
7 governing body for the purpose of addressing an unexpected
8 event which requires immediate attention because it poses:

9 (A) An imminent threat to public health or safety;

10 (B) An imminent threat of damage to public or private
11 property; or

12 (C) An imminent material financial loss or other imminent
13 substantial harm to a public agency, its employees or the
14 members of the public which it serves.

15 (3) "Executive session" means any meeting or part of a
16 meeting of a governing body which is closed to the public.

17 (4) "Governing body" means the members of any public
18 agency having the authority to make decisions for or

19 recommendations to a public agency on policy or administration,
20 the membership of a governing body consists of two or more
21 members; for the purposes of this article, a governing body of
22 the Legislature is any standing, select or special committee,
23 except the commission on special investigations, as determined
24 by the rules of the respective houses of the Legislature.

25 (5) "Meeting" means the convening of a governing body of
26 a public agency for which a quorum is required in order to make
27 a decision or to deliberate toward a decision on any matter which
28 results in an official action. Meetings may be held by telephone
29 conference or other electronic means. The term meeting does not
30 include:

31 (A) Any meeting for the purpose of making an adjudicatory
32 decision in any quasi-judicial, administrative or Court of Claims
33 proceeding;

34 (B) Any on-site inspection of any project or program;

35 (C) Any political party caucus;

36 (D) General discussions among members of a governing
37 body on issues of interest to the public when held in a planned or
38 unplanned social, educational, training, informal, ceremonial or
39 similar setting, without intent to conduct public business even if
40 a quorum is present and public business is discussed but there is
41 no intention for the discussion to lead to an official action; or

42 (E) Discussions by members of a governing body on
43 logistical and procedural methods to schedule and regulate a
44 meeting.

45 (6) "Official action" means action which is taken by virtue
46 of power granted by law, ordinance, policy, rule, or by virtue of
47 the office held.

48 (7) "Public agency" means any administrative or legislative
49 unit of state, county or municipal government, including any

50 department, division, bureau, office, commission, authority,
51 board, public corporation, section, committee, subcommittee or
52 any other agency or subunit of the foregoing, authorized by law
53 to exercise some portion of executive or legislative power. The
54 term “public agency” does not include courts created by article
55 eight of the West Virginia Constitution or the system of family
56 law masters created by article four, chapter forty-eight-a of this
57 code.

58 (8) “Quorum” means the gathering of a simple majority of
59 the constituent membership of a governing body, unless
60 applicable law provides for varying the required ratio.

61 (9) “Regular meeting” means a meeting of a governing body
62 at which the regular business of the public is conducted.

63 (10) “Special meeting” means a meeting of a governing body
64 other than a regular meeting or an emergency meeting.

§6-9A-3. Proceedings to be open; public notice of meetings.

1 (a) Except as expressly and specifically otherwise provided
2 by law, whether heretofore or hereinafter enacted, and except as
3 provided in section four of this article, all meetings of any
4 governing body shall be open to the public.

5 (b) Any governing body may make and enforce reasonable
6 rules for attendance and presentation at any meeting where there
7 is not room enough for all members of the public who wish to
8 attend.

9 (c) This article does not prohibit the removal from a meeting
10 of any member of the public who is disrupting the meeting to the
11 extent that orderly conduct of the meeting is compromised:
12 *Provided*, That persons who desire to address the governing
13 body may not be required to register to address the body more
14 than fifteen minutes prior to time the scheduled meeting is to
15 commence.

16 (d) Each governing body shall promulgate rules by which the
17 date, time, place and agenda of all regularly scheduled meetings
18 and the date, time, place and purpose of all special meetings are
19 made available, in advance, to the public and news media.

20 (e) Each governing body of the executive branch of the state
21 shall electronically file a notice of each meeting with the
22 Secretary of State for publication on the Secretary of State's
23 website.

24 (1) Each notice shall state the date, time, place and purpose
25 of the meeting.

26 (2) Each notice of a special meeting or a regular meeting
27 shall be filed in a manner to allow each notice to appear on the
28 Secretary of State's website at least five business days prior to
29 the date of the meeting.

30 (3) When calculating the days, the day of the meeting is not
31 to be counted. If a meeting notice is filed anytime other than
32 during the Secretary of State's regular business hours, the date
33 of filing will be considered the next business day.

34 (f) The Secretary of State shall retain copies of all notices
35 filed for ten years.

36 (g) The Secretary of State may promulgate procedural rules
37 governing the electronic filing of meeting notices.

38 (h) In the event of an emergency a governing body may call
39 an emergency meeting.

40 (1) The governing body of a state executive branch agency
41 shall electronically file a notice for an emergency meeting with
42 the Secretary of State, as soon as practicable prior to the
43 meeting. Any other governing body shall notice an emergency
44 meeting in a manner which is consistent with this article and the
45 Ethics Commission Committee on Open Governmental

46 Meeting's opinions issued pursuant to the authority of section
47 ten of this article, as soon as practicable prior to the meeting.

48 (2) The emergency meeting notice shall state the date, time,
49 place and purpose of the meeting and the facts and
50 circumstances of the emergency.

51 (i) Upon petition by any adversely affected party any court
52 of competent jurisdiction may invalidate any action taken at any
53 meeting for which notice did not comply with the requirements
54 of this section.

CHAPTER 144

**(Com Sub. for H. B. 2534 - By Delegates Morgan, Stephens,
Diserio, Jones, Paxton and P. Smith)**

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 1, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto a new article, designated §47-26-1, §47-26-2, §47-26-3 and §47-26-4, all relating to the regulation of pawn brokers; defining terms; requiring transaction records; creating offenses; specifying misdemeanor criminal penalty for violations; requiring record retention; and allowing for additional local regulation by municipalities or counties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §47-26-1, §47-26-2, §47-26-3 and §47-26-4, all to read as follows:

ARTICLE 26. PAWNBROKERS.**§47-26-1. Definitions.**

1 (a) "Pawnbroker" means any person, partnership, association
2 or corporation or employee thereof advancing money in a pawn
3 transaction in exchange for collateral in the property of the
4 pledgor. Pawnbroker does not mean any bank which is regulated
5 by the West Virginia Division of Financial Institutions; the
6 Comptroller of the Currency of the United States; the Federal
7 Deposit Insurance Corporation; the Board of Governors of the
8 Federal Reserve System or any other federal or state authority;
9 and all affiliates thereof and any bank or savings and loan
10 association whose deposits or accounts are eligible for insurance
11 by the Bank Insurance Fund or the Savings Association
12 Insurance Fund or other fund administered by the Federal
13 Deposit Insurance Corporation all affiliates thereof, any state or
14 federally chartered credit union, and any finance company
15 subject to licensing and regulation by the West Virginia Division
16 of Financial Institutions.

17 (b) "Pawn transaction" means a transaction between a
18 pawnbroker and a pledgor where the pledgor's property is placed
19 in the possession of the pawnbroker as security for money or
20 other valuable consideration provided to the pledgor on the
21 condition that the pledgor may pay a pawn charge and redeem
22 his or her property within a predetermined time frame. Pawn
23 transactions do not include those transactions where securities,
24 titles or printed evidence of indebtedness are used as security for
25 the transaction.

26 (c) "Pledgor" means a person who delivers the pledge into
27 the possession of a pawnbroker.

28 (d) "Purchase" or "purchase transaction" means the transfer
29 and delivering of goods by a person to a pawnbroker by

30 acquisition for value, consignment or trade for other goods. This
31 definition does not include purchases by pawnbrokers of items
32 not used or intended for resale, consignment or trade of the item
33 to another.

§47-26-2. Purchase and Pawn Transaction Records.

1 (a) All pawnbrokers shall make and maintain a transaction
2 report on all purchase or pawn transactions, except for refinance
3 pawn transactions or merchandise bought from a manufacturer
4 or wholesaler with an established place of business. The required
5 transaction report shall include the following:

6 (1) The date of the transaction;

7 (2) The name of the seller;

8 (3) The name of the clerk who handled the transaction;

9 (4) The corresponding pawn ticket number;

10 (5) The terms of the loan or purchase;

11 (6) A copy of the seller's or pledger's government photo
12 identification and type; *Provided*, That if the seller or pledger
13 does not have a government issued photo identification, the
14 pawnbroker shall have a photograph of the seller or pledger; and

15 (7) A detailed description of the property.

16 (b) For purposes of meeting the requirements of subsection
17 (a) of this section, a detailed description of the property shall
18 include the following:

19 (1) In the case of firearms, the description shall include the
20 brand, model, caliber, type, and serial number;

21 (2) In the case of jewelry, the type of jewelry presented, the
22 karat weight, whether it is made of white gold, yellow gold or
23 other precious metals, and other description of the stones, shape,

24 cut, and oddities, etc. which are sufficient to describe the article
25 of jewelry;

26 (3) In the case of other types of articles and property, the
27 description shall include the type of article, brand, model and
28 serial number on the article, or any other such identifying
29 information or description to which is sufficient to specifically
30 describe the item or property.

31 (c) The seller or pledger shall be required to sign the pawn
32 transaction statement or purchase transaction statement; and a
33 signed statement from the seller or pledger affirming ownership
34 shall appear on the bill of sale or pawn ticket that is completed
35 by the seller or pledger at the time of the transaction.

36 (d) The pawnbroker shall maintain the original of all
37 purchase or pawn transaction statements for three years, and
38 shall make the original copies of the purchase or pawn
39 transaction statements available for inspection by law
40 enforcement officers and law enforcement agencies upon request
41 during the posted hours of operation of the business.

42 (e) The information required to be collected pursuant to this
43 section is confidential, is not public record, and should only be
44 disclosed as provided in this section or otherwise provided by
45 law: *Provided*, That the confidential nature of this information
46 in no way impedes the pawnbroker's duty to accurately collect
47 and timely provide the information to law enforcement.

§47-26-3. Penalties; pawnbroker.

1 A pawnbroker who violates the provisions of this article is
2 guilty of a misdemeanor, and shall be fined not less than \$100
3 and not more than \$200 for each offense.

§47-26-4. County and municipal regulation of pawnbrokers.

1 This article may not be construed to prohibit or otherwise
2 limit any county or municipality of this state from adopting an

3 ordinance, to the extent that the ordinance does not conflict or
4 create lesser requirements than this article or any other provision
5 of this code, establishing additional requirements of
6 pawnbrokers within its jurisdiction. Pawnbrokers located in a
7 county or municipality in which an ordinance establishes
8 reporting requirements to local law-enforcement officials are not
9 required to provide duplicate information to other law-
10 enforcement officials pursuant to section three of this article.

CHAPTER 145

**(S. B. 460 - By Senators Wells, Green, Barnes, Beach,
Edgell, Fitzsimmons, Laird, Snyder, Sypolt, Walters,
Yost, Unger, Kessler (Mr. President),
Stollings, Jenkins, Cann, Plymale and Williams)**

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §11-21-12e of the Code of West Virginia, 1931, as amended, relating to exempting active duty military pay for resident individuals serving thirty or more continuous days on active duty in the armed forces of the United States, National Guard or armed forces reserves for the taxable year in which the individual has separated from active military service; and providing a limitation.

Be it enacted by the Legislature of West Virginia:

That § 11-21-12e of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.**PART II. RESIDENTS.****§ 11-21-12e. Additional modification reducing federal adjusted gross income.**

1 (a) For taxable years beginning after December 31, 2000, in
2 addition to amounts authorized to be subtracted from federal
3 adjusted gross income pursuant to subsection (c), section twelve
4 of this article, active duty military pay received for the period of
5 time an individual is on active duty as a member of the National
6 Guard or armed forces reserve called to active duty pursuant to
7 an Executive Order of the President of the United States for duty
8 in Operation Enduring Freedom or for domestic security duty is
9 an authorized modification reducing federal adjusted gross
10 income, but only to the extent the active duty military pay is
11 included in federal adjusted gross income for the taxable year in
12 which it is received.

13 (b) For taxable years beginning after December 31, 2012, in
14 addition to amounts authorized to be subtracted from federal
15 adjusted gross income pursuant to subsection (c), section twelve
16 of this article, active duty military pay received by a resident
17 individual who is on active duty for thirty continuous days or
18 more in the armed forces of the United States, the National
19 Guard or armed forces reserve is an authorized modification
20 reducing federal adjusted gross income for the taxable year in
21 which the individual has separated from active military service,
22 but only to the extent the active duty military pay is included in
23 federal adjusted gross income for the taxable year in which it is
24 received.

CHAPTER 146

**(Com. Sub. for S. B. 386 - Senators Cookman,
Plymale and Palumbo)**

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §53-8-4 of the Code of West Virginia, 1931, as amended, relating generally to personal safety orders; amending the grounds for issuance of a personal safety order; and establishing venue for issuance of a personal safety order.

Be it enacted by the Legislature of West Virginia:

That §53-8-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. PERSONAL SAFETY ORDERS.

§53-8-4. Petition seeking relief.

1 (a) *Underlying acts.* – A petitioner may seek relief under this
2 article by filing with a magistrate court a petition that alleges the
3 commission of any of the following acts against the petitioner by
4 the respondent:

5 (1) A sexual offense or attempted sexual offense as defined
6 in section one of this article;

7 (2) A violation of subsection (a), section nine-a, article two,
8 chapter sixty-one of this code; or

9 (3) Repeated credible threats of bodily injury when the
10 person making the threats knows or has reason to know that the
11 threats cause another person to reasonably fear for his or her
12 safety.

13 (b) *Contents.* –

14 The petition shall:

15 (1) Be verified and provide notice to the petitioner that an
16 individual who knowingly provides false information in the
17 petition is guilty of a misdemeanor and, on conviction, is subject
18 to the penalties specified in subsection (d) of this section;

19 (2) Subject to the provisions of subsection (c) of this section,
20 contain the address of the petitioner; and

21 (3) Include all information known to the petitioner of:

22 (A) The nature and extent of the act specified in subsection
23 (a) of this section for which the relief is being sought, including
24 information known to the petitioner concerning previous harm
25 or injury resulting from an act specified in subsection (a) of this
26 section by the respondent;

27 (B) Each previous and pending action between the parties in
28 any court; and

29 (C) The whereabouts of the respondent.

30 (c) *Address may be stricken.* – If, in a proceeding under this
31 article, a petitioner alleges, and the court finds, that the
32 disclosure of the address of the petitioner would risk further
33 harm to the petitioner or a member of the petitioner's household,
34 that address may be stricken from the petition and omitted from
35 all other documents filed with, or transferred to, a court.

36 (d) *Providing false information.* – An individual who
37 knowingly provides false information in a petition filed under
38 this section is guilty of a misdemeanor and, upon conviction
39 thereof, shall be fined not less than \$50 nor more than \$1,000 or
40 confined in jail not more than ninety days, or both.

41 (e) *Withdrawal or dismissal of a petition prior to*
42 *adjudication operates as a dismissal without prejudice.* – No
43 action for a personal safety order may be dismissed because the

44 respondent is being prosecuted for a crime against the petitioner.
45 For any action commenced under this article, dismissal of a case
46 or a finding of not guilty, does not require dismissal of the action
47 for a civil protection order.

48 (f) *Venue*. – The action may be heard in the county in which
49 any underlying act occurred for which relief is sought in the
50 petition, in the county in which the respondent is living, or in the
51 county in which the petitioner is living, either temporarily or
52 permanently.

CHAPTER 147

(Com. Sub. for H. B. 2888 - By Delegates Miley, Fragale,
Manchin, Fleischauer, Longstreth and Caputo)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 1, 2013.]

AN ACT to amend and reenact §8-14-7 of the Code of West Virginia, 1931, as amended, relating to policemen's civil service commissions; authorizing commissioners to serve on other boards and commissions.

Be it enacted by the Legislature of West Virginia:

That §8-14-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE

**MATRONS; SPECIAL SCHOOL ZONE
AND PARKING LOT OR PARKING
BUILDING POLICE OFFICERS; CIVIL
SERVICE FOR CERTAIN POLICE
DEPARTMENTS.**

§8-14-7. Policemen's civil service commission generally.

1 (a) In every Class I and Class II city having a paid police
2 department, there shall be a "Policemen's Civil Service
3 Commission."

4 (b) The commission shall consist of three commissioners, as
5 follows:

6 (1) One shall be appointed by the mayor of the city;

7 (2) One shall be appointed by the local fraternal order of
8 police; and

9 (3) One shall be appointed by the local chamber of
10 commerce, or if there is none, by a local business association.

11 (c) The commissioners shall be qualified voters of the city
12 for which they are appointed.

13 (1) At least two of the commissioners shall be individuals in
14 full sympathy with the purposes of the civil service provisions
15 of this article.

16 (2) Not more than two of the commissioners, at any one
17 time, may be registered to vote as members of the same political
18 party.

19 (d) In the event there is no local chamber of commerce or
20 local business association at the time any appointment is to be
21 made by it, the appointment shall be made by the other two
22 commissioners by mutual agreement.

23 (e) Members shall serve terms of four years, staggered in
24 accordance with prior enactments of this section.

25 (f) (1) If any commissioner of the civil service commission
26 ceases to be a member of the commission by virtue of death,
27 final removal or other cause, a new commissioner shall be
28 appointed to fill the unexpired term of the commissioner within
29 ten days after the excommissioner has ceased to be a member of
30 the commission.

31 (2) The appointment shall be made by the officer or body
32 who in the first instance appointed the commissioner who is no
33 longer a member of the commission, except that in the case of
34 a vacancy in an appointment made by the Governor, which
35 vacancy occurs after the effective date of this article, the
36 appointment for the unexpired term shall be made by the mayor.

37 (g) Each year the three members of the commission shall,
38 together, elect one of their number to act as president of the
39 commission, who serves as president for one year.

40 (h) The mayor may, at any time, remove any commissioner
41 or commissioners for good cause, which shall be stated in
42 writing and made a part of the records of the commission.

43 (1) Once the mayor has removed any commissioner, the
44 mayor shall within ten days file in the office of the clerk of the
45 circuit court of the county in which the city or the major portion
46 of the territory of the city is located a petition setting forth in
47 full the reason for the removal and praying for the confirmation
48 by the circuit court of the action of the mayor in so removing the
49 commissioner.

50 (2) A copy of the petition shall be served upon the
51 commissioner removed simultaneously with its filing in the
52 office of the clerk of the circuit court and has precedence on the
53 docket of the court and shall be heard by the court as soon as

54 practicable upon the request of the removed commissioner or
55 commissioners.

56 (i) (1) All rights vested in the circuit court by this section
57 may be exercised by the judge thereof in vacation.

58 (2) If no term of the circuit court is being held at the time of
59 the filing of the petition, and the judge cannot be reached in the
60 county in which the petition was filed, the petition shall be
61 heard at the next succeeding term of the circuit court, whether
62 regular or special, and the commissioner or commissioners
63 removed remains removed until a hearing is had upon the
64 petition of the mayor.

65 (3) The court or the judge thereof in vacation shall hear and
66 decide the issues presented by the petition.

67 (j) (1) The mayor or commissioner or commissioners, as the
68 case may be, against whom the decision of the court or the judge
69 thereof in vacation is rendered, has the right to petition the
70 Supreme Court of Appeals for a review of the decision of the
71 circuit court or the judge thereof in vacation as in other civil
72 cases.

73 (2) If the mayor fails to file a petition in the office of the
74 clerk of the circuit court within ten days after the removal of the
75 commissioner or commissioners, the commissioner or
76 commissioners shall immediately resume his or her or their
77 position or positions as a member or members of the
78 policemen's civil service commission.

79 (k) Any resident of the city has the right at any time to file
80 charges against and seek the removal of any member of the
81 policemen's civil service commission of the city.

82 (1) The charges shall be filed in the form of a petition in the
83 office of the clerk of the circuit court of the county in which the

84 city or the major portion of the territory of the city is located,
85 and a copy of the petition shall be served upon the
86 commissioner or commissioners sought to be removed.

87 (2) The petition shall be matured for hearing and heard by
88 the circuit court or the judge thereof in vacation in the same
89 manner as civil proceedings in the circuit courts of this state are
90 heard, and the party against whom the circuit court's decision is
91 rendered has the right to petition the Supreme Court of Appeals
92 for a review of the action of the circuit court, as in other civil
93 cases.

94 (1) A commissioner may not hold another office under the
95 United States, this state, or any municipality, county or other
96 political subdivision thereof, nor may a commissioner serve on
97 a political committee or take an active part in the management
98 of a political campaign, except that a commissioner may serve
99 as a notary public or on another local, regional or state board or
100 commission in a part-time capacity.

CHAPTER 148

**(Com. Sub. for H. B. 2577 - By Delegates Perdue, Perry,
Eldridge, Lawrence and Stagers)**

[Passed April 13, 2013; in effect July 1, 2013.]

[Approved by the Governor on May 3, 2013.]

AN ACT to repeal §30-5-1a, §30-5-1b, §30-5-2a, §30-5-3a, §30-5-5a,
§30-5-5b, §30-5-6a, §30-5-7a, §30-5-7b, §30-5-7c, §30-5-9a,
§30-5-10a, §30-5-12c, §30-5-14a, §30-5-14b, §30-5-16a,
§30-5-16b, §30-5-16c and §30-5-22a of the Code of West Virginia,
1931, as amended; to amend and reenact §29-29-3 of said code; to

amend and reenact §30-5-1, §30-5-2, §30-5-3, §30-5-4, §30-5-5, §30-5-6, §30-5-7, §30-5-8, §30-5-9, §30-5-10, §30-5-11, §30-5-12, §30-5-13, §30-5-14, §30-5-15, §30-5-16, §30-5-17, §30-5-18, §30-5-19, §30-5-20, §30-5-21, §30-5-22, §30-5-23, §30-5-24, §30-5-26, §30-5-27, §30-5-28 and §30-5-30 of said code; to amend said code by adding thereto six new sections, designated §30-5-25, §30-5-29, §30-5-31, §30-5-32, §30-5-33 and §30-5-34; to amend and reenact §60A-8-7 of said code; to amend and reenact §60A-10-3 of said code; and to amend and reenact §60A-10-5 of said code, all relating to pharmacy practice; prohibiting the practice of pharmacist care without a license; permitting a licensed practitioner to dispense in certain settings; providing other applicable sections; providing definitions; providing for board composition and qualifications; setting forth the powers and duties of the board; clarifying rule-making authority; continuing a special revenue account; establishing license, registration and permit requirements; establishing qualifications for licensure as a pharmacist and registration as a pharmacy technician; creating a scope of practice for pharmacists and pharmacy technicians; establishing requirements for a pharmacy intern to assist in practice of pharmacy care; creating a temporary permit; prohibiting the dispensing of prescription orders in absence of a practitioner-patient relationship; providing for reciprocal licensure; establishing renewal requirements; providing for exemptions from licensure; creating a special volunteer license; providing requirement to participate in collaborative pharmacy practice; providing for collaborative pharmacy practice agreements; providing requirements for dispensing generic drugs; requiring and authorizing registration of pharmacies; establishing for permit for mail-order pharmacies and the manufacturing of drugs; providing requirements of filling prescriptions; providing requirements for the display of a board authorization; establishing requirements for pharmacist-in-charge; setting forth limitations of the article; permitting the board to file an injunction; setting forth grounds for disciplinary actions; allowing for specific disciplinary actions;

providing procedures for investigation of complaints; providing duty to warn; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal offenses are to be reported to law enforcement; and updating internal references.

Be it enacted by the Legislature of West Virginia:

That §30-5-1 a, §30-5-1b, §30-5-2 a, §30-5-3a, §30-5-5a, §30-5-5b, §30-5-6a, §30-5-7a, §30-5-7b, §30-5-7c, §30-5-9a, §30-5-10a, §30-5-12c, §30-5-14a, §30-5-14b, §30-5-16a, §30-5-16b, §30-5-16c and §30-5-22a of the Code of West Virginia, 1931, as amended, be repealed; that §29-29-3 of said code be amended and reenacted; that §30-5-1, §30-5-2, §30-5-3, §30-5-4, §30-5-5, §30-5-6, §30-5-7, §30-5-8, §30-5-9, §30-5-10, §30-5-11, §30-5-12, §30-5-13, §30-5-14, §30-5-15, §30-5-16, §30-5-17, §30-5-18, §30-5-19, §30-5-20, §30-5-21, §30-5-22, §30-5-23, §30-5-24, §30-5-26, §30-5-27, §30-5-28 and §30-5-30 of said code be amended and reenacted; that said code be amended by adding thereto six new sections, designated §30-5-25, §30-5-29, §30-5-31, §30-5-32, §30-5-33 and §30-5-34; that §60A-8-7 of said code be amended and reenacted; that §60A-10-3 of said code be amended and reenacted; and that §60A-10-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 29. VOLUNTEER FOR NONPROFIT YOUTH ORGANIZATIONS ACT.

§29-29-3. Definitions.

- 1 As used in this article:
- 2 (a) "Applicant" means any emergency medical service
- 3 applicant, law-enforcement applicant or medical services
- 4 applicant, that is registered as a volunteer of the nonprofit

5 organization, making application for a nonprofit volunteer
6 permit under the provisions of this article.

7 (b) "Appropriate licensing agency" means the board,
8 department, division or other agency in each jurisdiction charged
9 with the licensing, certification or permitting of persons
10 performing services of the nature and kind described or duties
11 provided for in this article.

12 (c) "Emergency medical service applicant" means a person
13 authorized to provide emergency medical services in West
14 Virginia, or in another state who but for this article would be
15 required to obtain a certification from the Commissioner of the
16 Bureau for Public Health pursuant to article eight, chapter
17 sixteen of this code to perform emergency medical services in
18 this state.

19 (d) "Law-enforcement applicant" means a person authorized
20 to work as a law-enforcement officer in West Virginia, or in
21 another state who but for this article would be required to obtain
22 authorization pursuant to article twenty-nine, chapter thirty of
23 this code to work as a law-enforcement officer in this state:
24 *Provided, That any person authorized to work as a law-*
25 *enforcement officer in another state shall have completed a*
26 *training program approved by the governing authority of a*
27 *political subdivision in order to work as a law-enforcement*
28 *officer in that state.*

29 (e) "Medical services applicant" means a person authorized
30 to provide medical services in West Virginia, or in another state
31 who but for this article would be required to obtain authorization
32 to practice in this state, and who is a:

33 (1) Practitioner of medicine, surgery or podiatry as defined
34 in article three, chapter thirty of this code;

35 (2) Physician assistant as defined in section three, article
36 three, chapter thirty of this code;

- 37 (3) Chiropractor as defined in section three, article sixteen,
38 chapter thirty of this code;
- 39 (4) Dentist or dental assistant as defined in article four,
40 chapter thirty of this code;
- 41 (5) Nurse as defined in article seven or seven-a, chapter
42 thirty of this code;
- 43 (6) Nurse practitioner as defined in section one, article four-
44 b, chapter nine of this code;
- 45 (7) Occupational therapist as defined in section three, article
46 twenty-eight, chapter thirty of this code;
- 47 (8) Practitioner of optometry as defined in section three,
48 article eight, chapter thirty of this code;
- 49 (9) Osteopathic physician or surgeon as defined in article
50 fourteen, chapter thirty of this code;
- 51 (10) Osteopathic physician assistant as defined in article
52 fourteen-a, chapter thirty of this code;
- 53 (11) Pharmacist as defined in article five, chapter thirty of
54 this code;
- 55 (12) Physical therapist as defined in article twenty, chapter
56 thirty of this code;
- 57 (13) Professional counselor as defined in section three,
58 article thirty-one, chapter thirty of this code;
- 59 (14) Practitioner of psychology or school psychologist as
60 defined in section two, article twenty-one, chapter thirty of this
61 code;
- 62 (15) Radiologic technologist, nuclear medicine technologist
63 or practitioner of medical imaging and radiation therapy
64 technology as defined in section four, article twenty-three,
65 chapter thirty of this code; and

66 (16) Social worker licensed by the state Board of Social
67 Work Examiners pursuant to article thirty, chapter thirty of this
68 code.

69 (f) "Nonprofit volunteer permit" or "permit" means a permit
70 issued to an applicant pursuant to the provisions of this article.

71 (g) "Nonprofit volunteer permittee" or "permittee" means a
72 person holding a nonprofit volunteer permit issued under the
73 provisions of this article.

74 (h) "Nonprofit youth organization" or "organization" means
75 any nonprofit organization, including any subsidiary, affiliated
76 or other related entity within its corporate or business structure,
77 that has been chartered by the United States Congress to help
78 train young people to do things for themselves and others, and
79 that has established an area of at least six thousand contiguous
80 acres within West Virginia in which to provide adventure or
81 recreational activities for these young people and others.

82 (i) "Nonprofit volunteer organization medical director"
83 means an individual licensed in West Virginia as a practitioner
84 of medicine or surgery pursuant to article three, chapter thirty of
85 this code, or an individual licensed in West Virginia as an
86 osteopathic physician or surgeon pursuant to article fourteen,
87 chapter thirty of this code, that has been designated by the
88 nonprofit volunteer organization to serve as the medical director
89 for an event or program offered by the organization.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-1. Short title.

1 This article shall be known as and may be cited as the "The
2 Larry W. Border Pharmacy Practice Act".

§30-5-2. Unlawful acts.

1 (a) It is unlawful for any person in this state to practice or
2 offer to practice pharmacist care without a license pursuant to
3 the provisions of this article; or to practice or offer to assist in
4 the practice of pharmacist care without being registered pursuant
5 to the provisions of this article. Further, it is unlawful to
6 advertise or use any title or description tending to convey or give
7 the impression that he or she is a pharmacist or pharmacy
8 technician, unless the person is licensed or registered under the
9 provisions of this article.

10 (b) A business entity may not render any service or engage
11 in any activity which, if rendered or engaged in by an individual,
12 would constitute the practice of pharmacist care, except through
13 a licensee.

14 (c) It is unlawful for the proprietor of a pharmacy or a
15 ambulatory health care facility to permit a person, who is not a
16 licensed pharmacist, to practice pharmacist care: *Provided*, That
17 a charitable clinic pharmacy may permit a licensed prescribing
18 practitioner to act in place of the pharmacist when no pharmacist
19 is present in the charitable clinic.

§30-5-3. Applicable law.

1 The practices authorized under the provisions of this article
2 and the Board of Pharmacy are subject to article one of this
3 chapter, the provisions of this article, and any rules promulgated
4 pursuant this article.

§30-5-4. Definitions.

1 As used in this article:

2 (1) "Ambulatory health care facility" includes any facility
3 defined in section one, article five-b, chapter sixteen of this code,
4 that also has a pharmacy, offers pharmacist care, or is otherwise
5 engaged in the practice of pharmacist care.

6 (2) “Active Ingredients” means chemicals, substances, or
7 other components of articles intended for use in the diagnosis,
8 cure, mitigation, treatment, or prevention of diseases in humans
9 or animals or for use as nutritional supplements.

10 (3) “Administer” means the direct application of a drug to
11 the body of a patient or research subject by injection, inhalation,
12 ingestion or any other means.

13 (4) “Board” means the West Virginia Board of Pharmacy.

14 (5) “Board authorization” means a license, registration or
15 permit issued under this article.

16 (6) “Chain Pharmacy Warehouse” means a permanent
17 physical location for drugs and/or devices that acts as a central
18 warehouse and performs intracompany sales and transfers of
19 prescription drugs or devices to chain pharmacies, which are
20 members of the same affiliated group, under common ownership
21 and control.

22 (7) “Charitable clinic pharmacy” means a clinic or facility
23 organized as a not-for-profit corporation that has a pharmacy,
24 offers pharmacist care, or is otherwise engaged in the practice of
25 pharmacist care and dispenses its prescriptions free of charge to
26 appropriately screened and qualified indigent patients.

27 (8) “Collaborative pharmacy practice” is that practice of
28 pharmacist care where one or more pharmacists have jointly
29 agreed, on a voluntary basis, to work in conjunction with one or
30 more physicians under written protocol where the pharmacist or
31 pharmacists may perform certain patient care functions
32 authorized by the physician or physicians under certain specified
33 conditions and limitations.

34 (9) “Collaborative pharmacy practice agreement” is a written
35 and signed agreement, which is a physician directed approach,

36 that is entered into between an individual physician or physician
37 group, an individual pharmacist or pharmacists and an individual
38 patient or the patient's authorized representative who has given
39 informed consent that provides for collaborative pharmacy
40 practice for the purpose of drug therapy management of a
41 patient, which has been approved by the board, the Board of
42 Medicine in the case of an allopathic physician or the West
43 Virginia Board of Osteopathic Medicine in the case of an
44 osteopathic physician.

45 (10) "Common Carrier" means any person or entity who
46 undertakes, whether directly or by any other arrangement, to
47 transport property including prescription drugs for compen-
48 sation.

49 (11) "Component" means any active ingredient or added
50 substance intended for use in the compounding of a drug
51 product, including those that may not appear in such product.

52 (12) "Compounding" means:

53 (A) The preparation, mixing, assembling, packaging or
54 labeling of a drug or device:

55 (i) As the result of a practitioner's prescription drug order or
56 initiative based on the practitioner/patient/pharmacist
57 relationship in the course of professional practice for sale or
58 dispensing; or

59 (ii) For the purpose of, or as an incident to, research,
60 teaching or chemical analysis and not for sale or dispensing; and

61 (B) The preparation of drugs or devices in anticipation of
62 prescription drug orders based on routine, regularly observed
63 prescribing patterns.

64 (13) "Deliver" or "delivery" means the actual, constructive
65 or attempted transfer of a drug or device from one person to
66 another, whether or not for a consideration.

67 (14) "Device" means an instrument, apparatus, implement or
68 machine, contrivance, implant or other similar or related article,
69 including any component part or accessory, which is required
70 under federal law to bear the label, "Caution: Federal or state
71 law requires dispensing by or on the order of a physician".

72 (15) "Digital Signature" means an electronic signature based
73 upon cryptographic methods of originator authentication, and
74 computed by using a set of rules and a set of parameters so that
75 the identity of the signer and the integrity of the data can be
76 verified.

77 (16) "Dispense" or "dispensing" means the interpretation,
78 evaluation, and implementation of a prescription drug order,
79 including the preparation, verification and delivery of a drug or
80 device to a patient or patient's agent in a suitable container
81 appropriately labeled for subsequent administration to, or use by,
82 a patient.

83 (17) "Distribute" or "Distribution" means to sell, offer to
84 sell, deliver, offer to deliver, broker, give away, or transfer a
85 drug, whether by passage of title, physical movement, or both.
86 The term does not include:

87 (A) To dispense or administer;

88 (B) (i) Delivering or offering to deliver a drug by a common
89 carrier in the usual course of business as a common carrier; or
90 providing a drug sample to a patient by a practitioner licensed to
91 prescribe such drug;

92 (ii) A health care professional acting at the direction and
93 under the supervision of a practitioner; or the pharmacy of a
94 hospital or of another health care entity that is acting at the
95 direction of such a practitioner and that received such sample in
96 accordance with the Prescription Drug Marketing Act and
97 regulations to administer or dispense;

98 (iii) Intracompany sales.

99 (18) “Drop shipment” means the sale of a prescription drug
100 to a wholesale distributor by the manufacturer of the prescription
101 drug or by that manufacturer’s colicensed product partner, that
102 manufacturer’s third party logistics provider, that manufacturer’s
103 exclusive distributor, or by an authorized distributor of record
104 that purchased the product directly from the manufacturer or
105 from one of these entities whereby:

106 (A) The wholesale distributor takes title to but not physical
107 possession of such prescription drug;

108 (B) The wholesale distributor invoices the pharmacy,
109 pharmacy warehouse, or other person authorized by law to
110 dispense or administer such drug; and

111 (C) The pharmacy, pharmacy warehouse or other person
112 authorized by law to dispense or administer such drug receives
113 delivery of the prescription drug directly from the manufacturer
114 or from that manufacturer’s colicensed product partner, that
115 manufacturer’s third party logistics provider, that manufacturer’s
116 exclusive distributor, or from an authorized distributor of record
117 that purchased the product directly from the manufacturer or
118 from one of these entities.

119 (19) “Drug” means:

120 (A) Articles recognized as drugs by the United States Food
121 and Drug Administration, or in any official compendium, or
122 supplement;

123 (B) An article, designated by the board, for use in the
124 diagnosis, cure, mitigation, treatment, or prevention of disease
125 in humans or other animals;

126 (C) Articles, other than food, intended to affect the structure
127 or any function of the body of human or other animals; and

128 (D) Articles intended for use as a component of any articles
129 specified in paragraph (A), (B) or (C) of this subdivision.

130 (20) “Drug regimen review” includes, but is not limited to,
131 the following activities:

132 (A) Evaluation of the prescription drug orders and if
133 available, patient records for:

134 (i) Known allergies;

135 (ii) Rational therapy-contraindications;

136 (iii) Reasonable dose and route of administration; and

137 (iv) Reasonable directions for use.

138 (B) Evaluation of the prescription drug orders and patient
139 records for duplication of therapy.

140 (C) Evaluation of the prescription drug for interactions
141 and/or adverse effects which may include, but are not limited to,
142 any of the following:

143 (i) Drug-drug;

144 (ii) Drug-food;

145 (iii) Drug-disease; and

146 (iv) Adverse drug reactions.

147 (D) Evaluation of the prescription drug orders and if
148 available, patient records for proper use, including overuse and
149 underuse and optimum therapeutic outcomes.

150 (21) “Drug therapy management” means the review of drug
151 therapy regimens of patients by a pharmacist for the purpose of
152 evaluating and rendering advice to a physician regarding
153 adjustment of the regimen in accordance with the collaborative
154 pharmacy practice agreement. Decisions involving drug therapy

155 management shall be made in the best interest of the patient.

156 Drug therapy management is limited to:

157 (A) Implementing, modifying and managing drug therapy
158 according to the terms of the collaborative pharmacy practice
159 agreement;

160 (B) Collecting and reviewing patient histories;

161 (C) Obtaining and checking vital signs, including pulse,
162 temperature, blood pressure and respiration;

163 (D) Ordering screening laboratory tests that are dose related
164 and specific to the patient's medication or are protocol driven
165 and are also specifically set out in the collaborative pharmacy
166 practice agreement between the pharmacist and physician.

167 (22) "Electronic data intermediary" means an entity that
168 provides the infrastructure to connect a computer system,
169 hand-held electronic device or other electronic device used by a
170 prescribing practitioner with a computer system or other
171 electronic device used by a pharmacy to facilitate the secure
172 transmission of:

173 (A) An electronic prescription order;

174 (B) A refill authorization request;

175 (C) A communication; or

176 (D) Other patient care information.

177 (23) "E-prescribing" means the transmission, using
178 electronic media, of prescription or prescription-related
179 information between a practitioner, pharmacist, pharmacy
180 benefit manager or health plan as defined in 45 CFR §160.103,
181 either directly or through an electronic data intermediary.
182 E-prescribing includes, but is not limited to, two-way
183 transmissions between the point of care and the pharmacist.

184 E-prescribing may also be referenced by the terms “electronic
185 prescription” or “electronic order”.

186 (24) “Electronic Signature” means an electronic sound,
187 symbol, or process attached to or logically associated with a
188 record and executed or adopted by a person with the intent to
189 sign the record.

190 (25) “Electronic transmission” means transmission of
191 information in electronic form or the transmission of the exact
192 visual image of a document by way of electronic equipment.

193 (26) “Emergency medical reasons” include, but are not
194 limited to, transfers of a prescription drug by one pharmacy to
195 another pharmacy to alleviate a temporary shortage of a
196 prescription drug; sales to nearby emergency medical services,
197 i.e., ambulance companies and firefighting organizations in the
198 same state or same marketing or service area, or nearby licensed
199 practitioners of prescription drugs for use in the treatment of
200 acutely ill or injured persons; and provision of minimal
201 emergency supplies of prescription drugs to nearby nursing
202 homes for use in emergencies or during hours of the day when
203 necessary prescription drugs cannot be obtained.

204 (27) “Exclusive distributor” means an entity that:

205 (A) Contracts with a manufacturer to provide or coordinate
206 warehousing, wholesale distribution, or other services on behalf
207 of a manufacturer and who takes title to that manufacturer’s
208 prescription drug, but who does not have general responsibility
209 to direct the sale or disposition of the manufacturer’s
210 prescription drug; and

211 (B) Is licensed as a wholesale distributor under this article.

212 (28) “FDA” means the Food and Drug Administration, a
213 federal agency within the United States Department of Health
214 and Human Services.

215 (29) "Health care entity" means a person that provides
216 diagnostic, medical, pharmacist care, surgical, dental treatment,
217 or rehabilitative care but does not include a wholesale
218 distributor.

219 (30) "Health information" means any information, whether
220 oral or recorded in a form or medium, that:

221 (A) Is created or received by a health care provider, health
222 plan, public health authority, employer, life insurer, school or
223 university, or health care clearinghouse, and

224 (B) Relates to the past, present, or future physical or mental
225 health or condition of an individual; or the past, present, or
226 future payment for the provision of health care to an individual.

227 (31) "HIPAA" is the federal Health Insurance Portability and
228 Accountability Act of 1996 (Public Law 104-191).

229 (32) "Immediate container" means a container and does not
230 include package liners.

231 (33) "Individually identifiable health information" is
232 information that is a subset of health information, including
233 demographic information collected from an individual and is
234 created or received by a health care provider, health plan,
235 employer, or health care clearinghouse; and relates to the past,
236 present, or future physical or mental health or condition of an
237 individual; the provision of health care to an individual; or the
238 past, present, or future payment for the provision of health care
239 to an individual; and that identifies the individual; or with
240 respect to which there is a reasonable basis to believe the
241 information can be used to identify the individual.

242 (34) "Intracompany sales" means any transaction between a
243 division, subsidiary, parent, and/or affiliated or related company
244 under the common ownership and control of a corporate or other
245 legal business entity.

246 (35) "Label" means a display of written, printed, or graphic
247 matter upon the immediate container of any drug or device.

248 (36) "Labeling" means the process of preparing and affixing
249 a label to a drug container exclusive, however, of a labeling by
250 a manufacturer, packer or distributor of a nonprescription drug
251 or commercially packaged prescription drug or device.

252 (37) "Long-Term care facility" means a nursing home,
253 retirement care, mental care, or other facility or institution that
254 provides extended health care to resident patients.

255 (38) "Mail-order pharmacy" means a pharmacy, regardless
256 of its location, which dispenses greater than twenty-five percent
257 prescription drugs via the mail or other delivery services.

258 (39) "Manufacturer" means any person who is engaged in
259 manufacturing, preparing, propagating, processing, packaging,
260 repackaging or labeling of a prescription drug, whether within or
261 outside this state.

262 (40) "Manufacturing" means the production, preparation,
263 propagation or processing of a drug or device, either directly or
264 indirectly, by extraction from substances of natural origin or
265 independently by means of chemical or biological synthesis and
266 includes any packaging or repackaging of the substance or
267 substances or labeling or relabeling of its contents and the
268 promotion and marketing of the drugs or devices.
269 Manufacturing also includes the preparation and promotion of
270 commercially available products from bulk compounds for resale
271 by pharmacies, practitioners or other persons.

272 (41) "Medical order" means a lawful order of a practitioner
273 that may or may not include a prescription drug order.

274 (42) "Medication therapy management" is a distinct service
275 or group of services that optimize medication therapeutic
276 outcomes for individual patients. Medication therapy
277 management services are independent of, but can occur in

278 conjunction with, the provision of a medication or a medical
279 device. Medication therapy management encompasses a broad
280 range of professional activities and responsibilities within the
281 licensed pharmacist's scope of practice.

282 These services may include the following, according to the
283 individual needs of the patient:

284 (A) Performing or obtaining necessary assessments of the
285 patient's health status pertinent to medication therapy
286 management;

287 (B) Optimize medication use, performing medication
288 therapy, and formulating recommendations for patient
289 medication care plans;

290 (C) Developing therapeutic recommendations, to resolve
291 medication related problems;

292 (D) Monitoring and evaluating the patient's response to
293 medication therapy, including safety and effectiveness;

294 (E) Performing a comprehensive medication review to
295 identify, resolve, and prevent medication-related problems,
296 including adverse drug events;

297 (F) Documenting the care delivered and communicating
298 essential information to the patient's primary care providers;

299 (G) Providing verbal education and training designed to
300 enhance patient understanding and appropriate use of his or her
301 medications;

302 (H) Providing information, support services and resources
303 designed to enhance patient adherence with his or her medication
304 therapeutic regimens;

305 (I) Coordinating and integrating medication therapy
306 management services within the broader health care management
307 services being provided to the patient; and

308 (J) Such other patient care services as may be allowed by
309 law.

310 (43) "Misbranded" means a drug or device that has a label
311 that is false or misleading in any particular; or the label does not
312 bear the name and address of the manufacturer, packer, or
313 distributor and does not have an accurate statement of the
314 quantities of the active ingredients in the case of a drug; or the
315 label does not show an accurate monograph for prescription
316 drugs.

317 (44) "Nonprescription drug" means a drug which may be
318 sold without a prescription and which is labeled for use by the
319 consumer in accordance with the requirements of the laws and
320 rules of this state and the federal government.

321 (45) "Normal distribution channel" means a chain of custody
322 for a prescription drug that goes directly or by drop shipment,
323 from a manufacturer of the prescription drug, the manufacturer's
324 third-party logistics provider, or the manufacturer's exclusive
325 distributor to:

326 (A) A wholesale distributor to a pharmacy to a patient or
327 other designated persons authorized by law to dispense or
328 administer such prescription drug to a patient;

329 (B) A wholesale distributor to a chain pharmacy warehouse
330 to that chain pharmacy warehouse's intracompany pharmacy to
331 a patient or other designated persons authorized by law to
332 dispense or administer such prescription drug to a patient;

333 (C) A chain pharmacy warehouse to that chain pharmacy
334 warehouse's intracompany pharmacy to a patient or other
335 designated persons authorized by law to dispense or administer
336 such prescription drug to a patient;

337 (D) A pharmacy or to other designated persons authorized by
338 law to dispense or administer such prescription drug to a patient;
339 or

340 (E) As prescribed by the board's legislative rules.

341 (46) "Patient counseling" means the communication by the
342 pharmacist of information, as prescribed further in the rules of
343 the board, to the patient to improve therapy by aiding in the
344 proper use of drugs and devices.

345 (47) "Pedigree" means a statement or record in a written
346 form or electronic form, approved by the board, that records
347 each wholesale distribution of any given prescription drug
348 (excluding veterinary prescription drugs), which leaves the
349 normal distribution channel.

350 (48) "Person" means an individual, corporation, partnership,
351 association or any other legal entity, including government.

352 (49) "Pharmacist" means an individual currently licensed by
353 this state to engage in the practice of pharmacist care.

354 (50) "Pharmacist Care" means the provision by a pharmacist
355 of patient care activities, with or without the dispensing of drugs
356 or devices, intended to achieve outcomes related to the cure or
357 prevention of a disease, elimination or reduction of a patient's
358 symptoms, or arresting or slowing of a disease process and as
359 provided for in section ten.

360 (51) "Pharmacist-in-charge" means a pharmacist currently
361 licensed in this state who accepts responsibility for the operation
362 of a pharmacy in conformance with all laws and legislative rules
363 pertinent to the practice of pharmacist care and the distribution
364 of drugs and who is personally in full charge of the pharmacy
365 and pharmacy personnel.

366 (52) "Pharmacist's scope of practice pursuant to the
367 collaborative pharmacy practice agreement" means those duties
368 and limitations of duties placed upon the pharmacist by the
369 collaborating physician, as jointly approved by the board and the
370 Board of Medicine or the West Virginia Board of Osteopathic
371 Medicine.

372 (53) “Pharmacy” means any place within this state where
373 drugs are dispensed and pharmacist care is provided and any
374 place outside of this state where drugs are dispensed and
375 pharmacist care is provided to residents of this state.

376 (54) “Pharmacy Intern” or “Intern” means an individual who
377 is currently licensed to engage in the practice of pharmacist care
378 while under the supervision of a pharmacist.

379 (55) “Pharmacy related primary care” means the
380 pharmacist’s activities in patient education, health promotion,
381 selection and use of over the counter drugs and appliances and
382 referral or assistance with the prevention and treatment of health
383 related issues and diseases.

384 (56) “Pharmacy Technician” means a person registered with
385 the board to practice certain tasks related to the practice of
386 pharmacist care as permitted by the board.

387 (57) “Physician” means an individual currently licensed, in
388 good standing and without restrictions, as an allopathic physician
389 by the West Virginia Board of Medicine or an osteopathic
390 physician by the West Virginia Board of Osteopathic Medicine.

391 (58) “Practice of telepharmacy” means the provision of
392 pharmacist care by properly licensed pharmacists located within
393 United States jurisdictions through the use of
394 telecommunications or other technologies to patients or their
395 agents at a different location that are located within United
396 States jurisdictions.

397 (59) “Practitioner” means an individual authorized by a
398 jurisdiction of the United States to prescribe drugs in the course
399 of professional practices, as allowed by law.

400 (60) “Prescription drug” means any human drug required by
401 federal law or regulation to be dispensed only by prescription,

402 including finished dosage forms and active ingredients subject
403 to section 503(b) of the federal food, drug and cosmetic act.

404 (61) "Prescription or prescription drug order" means a lawful
405 order from a practitioner for a drug or device for a specific
406 patient, including orders derived from collaborative pharmacy
407 practice, where a valid patient-practitioner relationship exists,
408 that is communicated to a pharmacist in a pharmacy.

409 (62) "Product Labeling" means all labels and other written,
410 printed, or graphic matter upon any article or any of its
411 containers or wrappers, or accompanying such article.

412 (63) "Repackage" means changing the container, wrapper,
413 quantity, or product labeling of a drug or device to further the
414 distribution of the drug or device.

415 (64) "Repackager" means a person who repackages.

416 (65) "Therapeutic equivalence" mean drug products
417 classified as therapeutically equivalent can be substituted with
418 the full expectation that the substituted product will produce the
419 same clinical effect and safety profile as the prescribed product
420 which contain the same active ingredient(s); dosage form and
421 route of administration; and strength.

422 (66) "Third-party logistics provider" means a person who
423 contracts with a prescription drug manufacturer to provide or
424 coordinate warehousing, distribution or other services on behalf
425 of a manufacturer, but does not take title to the prescription drug
426 or have general responsibility to direct the prescription drug's
427 sale or disposition. A third-party logistics provider shall be
428 licensed as a wholesale distributor under this article and, in order
429 to be considered part of the normal distribution channel, shall
430 also be an authorized distributor of record.

431 (67) "Valid patient-practitioner relationship" means the
432 following have been established:

- 433 (A) A patient has a medical complaint;
- 434 (B) A medical history has been taken;
- 435 (C) A face-to-face physical examination adequate to
436 establish the medical complaint has been performed by the
437 prescribing practitioner or in the instances of telemedicine
438 through telemedicine practice approved by the appropriate
439 practitioner board; and
- 440 (D) Some logical connection exists between the medical
441 complaint, the medical history, and the physical examination and
442 the drug prescribed.
- 443 (68) “Wholesale distribution” and “wholesale distributions”
444 mean distribution of prescription drugs, including directly or
445 through the use of a third-party logistics provider or any other
446 situation in which title, ownership or control over the
447 prescription drug remains with one person or entity but the
448 prescription drug is brought into this state by another person or
449 entity on his, her or its behalf, to persons other than a consumer
450 or patient, but does not include:
- 451 (A) Intracompany sales, as defined in subdivision thirty-four
452 of this subsection;
- 453 (B) The purchase or other acquisition by a hospital or other
454 health care entity that is a member of a group purchasing
455 organization of a drug for its own use from the group purchasing
456 organization or from other hospitals or health care entities that
457 are members of such organizations;
- 458 (C) The sale, purchase or trade of a drug or an offer to sell,
459 purchase or trade a drug by a charitable organization described
460 in section 501(c)(3) of the United States Internal Revenue Code
461 of 1986 to a nonprofit affiliate of the organization to the extent
462 otherwise permitted by law;
- 463 (D) The sale, purchase or trade of a drug or an offer to sell,
464 purchase or trade a drug among hospitals or other health care

465 entities that are under common control. For purposes of this
466 article, “common control” means the power to direct or cause the
467 direction of the management and policies of a person or an
468 organization, whether by ownership of stock, voting rights, by
469 contract, or otherwise;

470 (E) The sale, purchase or trade of a drug or an offer to sell,
471 purchase or trade a drug for “emergency medical reasons” for
472 purposes of this article includes transfers of prescription drugs
473 by a retail pharmacy to another retail pharmacy to alleviate a
474 temporary shortage, except that the gross dollar value of such
475 transfers shall not exceed five percent of the total prescription
476 drug sales revenue of either the transferor or transferee pharmacy
477 during any twelve consecutive month period;

478 (F) The sale, purchase or trade of a drug, an offer to sell,
479 purchase, or trade a drug or the dispensing of a drug pursuant to
480 a prescription;

481 (G) The distribution of drug samples by manufacturers’
482 representatives or distributors’ representatives, if the distribution
483 is permitted under federal law [21 U. S. C. 353(d)];

484 (H) Drug returns by a pharmacy or chain drug warehouse to
485 wholesale drug distributor or the drug’s manufacturer; or

486 (J) The sale, purchase or trade of blood and blood
487 components intended for transfusion.

488 (69) “Wholesale drug distributor” or “wholesale distributor”
489 means any person or entity engaged in wholesale distribution of
490 prescription drugs, including, but not limited to, manufacturers,
491 repackers, own-label distributors, jobbers, private-label
492 distributors, brokers, warehouses, including manufacturers’ and
493 distributors’ warehouses, chain drug warehouses and wholesale
494 drug warehouses, independent wholesale drug traders,
495 prescription drug repackagers, physicians, dentists, veterinarians,

496 birth control and other clinics, individuals, hospitals, nursing
497 homes and/or their providers, health maintenance organizations
498 and other health care providers, and retail and hospital
499 pharmacies that conduct wholesale distributions, including, but
500 not limited to, any pharmacy distributor as defined in this
501 section. A wholesale drug distributor shall not include any for
502 hire carrier or person or entity hired solely to transport
503 prescription drugs.

§30-5-5. West Virginia Board of Pharmacy.

1 (a) The West Virginia Board of Pharmacy is continued. The
2 members of the board in office on July 1, 2013, shall, unless
3 sooner removed, continue to serve until their respective terms
4 expire and until their successors have been appointed and
5 qualified.

6 (b) The Governor, by and with the advice and consent of the
7 Senate, shall appoint:

8 (1) Five members who are licensed to practice pharmacist
9 care in this state; and

10 (2) Two citizen members, who are not licensed under the
11 provisions of this article, and who do not perform any services
12 related to the practice of the pharmacist care regulated under the
13 provisions of this article.

14 (c) After the initial appointment term, the appointment term
15 is five years. A member may not serve more than two
16 consecutive terms. A member who has served two consecutive
17 full terms may not be reappointed for at least one year after
18 completion of his or her second full term. A member may
19 continue to serve until his or her successor has been appointed
20 and qualified.

21 (d) Each licensed member of the board, at the time of his or
22 her appointment, shall have held a license in this state for a

23 period of not less than three years immediately preceding the
24 appointment.

25 (e) Each member of the board shall be a resident of this state
26 during the appointment term.

27 (f) A vacancy on the board shall be filled by appointment by
28 the Governor for the unexpired term of the member whose office
29 is vacant.

30 (g) The Governor may remove any member from the board
31 for neglect of duty, incompetency or official misconduct.

32 (h) A licensed member of the board immediately and
33 automatically forfeits membership to the board if his or her
34 license to practice is suspended or revoked in any jurisdiction.

35 (i) A member of the board immediately and automatically
36 forfeits membership to the board if he or she is convicted of a
37 felony under the laws of any jurisdiction or becomes a
38 nonresident of this state.

39 (j) The board shall elect annually one of its members as
40 president, one member as vice president and one member as
41 treasurer who shall serve at the will and pleasure of the board.

42 (k) Each member of the board is entitled to receive
43 compensation and expense reimbursement in accordance with
44 article one of this chapter.

45 (l) A simple majority of the membership serving on the
46 board at a given time is a quorum for the transaction of business.

47 (m) The board shall hold at least two meetings annually.
48 Other meetings shall be held at the call of the chairperson or
49 upon the written request of three members, at the time and place
50 as designated in the call or request.

51 (n) Prior to commencing his or her duties as a member of the
52 board, each member shall take and subscribe to the oath required
53 by section five, article four of the Constitution of this state.

54 (o) The members of the board when acting in good faith and
55 without malice shall enjoy immunity from individual civil
56 liability while acting within the scope of their duties as board
57 members.

§30-5-6. Powers and duties of the board.

1 The board has all the powers and duties set forth in this
2 article, by rule, in article one of this chapter and elsewhere in
3 law, including the power to:

4 (a) Hold meetings;

5 (b) Establish additional requirements for a license, permit
6 and registration;

7 (c) Establish procedures for submitting, approving and
8 rejecting applications for a license, permit and registration;

9 (d) Determine the qualifications of any applicant for a
10 license, permit and registration;

11 (e) Establish a fee schedule;

12 (f) Issue, renew, deny, suspend, revoke or reinstate a license,
13 permit, and registration;

14 (g) Prepare, conduct, administer and grade written, oral or
15 written and oral examinations for a license and registration and
16 establish what constitutes passage of the examination;

17 (h) Contract with third parties to administer the examinations
18 required under the provisions of this article;

19 (i) Maintain records of the examinations the board or a third
20 party administers, including the number of persons taking the
21 examination and the pass and fail rate;

22 (j) Regulate mail order pharmacies;

23 (k) Maintain an office, and hire, discharge, establish the job
24 requirements and fix the compensation of employees and

25 contract with persons necessary to enforce the provisions of this
26 article. Inspectors shall be licensed pharmacists;

27 (l) Investigate alleged violations of the provisions of this
28 article, legislative rules, orders and final decisions of the board;

29 (m) Conduct disciplinary hearings of persons regulated by
30 the board;

31 (n) Determine disciplinary action and issue orders;

32 (o) Institute appropriate legal action for the enforcement of
33 the provisions of this article;

34 (p) Maintain an accurate registry of names and addresses of
35 all persons regulated by the board;

36 (q) Keep accurate and complete records of its proceedings,
37 and certify the same as may be necessary and appropriate;

38 (r) Propose rules in accordance with the provisions of article
39 three, chapter twenty-nine-a of this code to implement the
40 provisions of this article;

41 (s) Sue and be sued in its official name as an agency of this
42 state;

43 (t) Confer with the Attorney General or his or her assistant
44 in connection with legal matters and questions; and

45 (u) Take all other actions necessary and proper to effectuate
46 the purposes of this article.

§30-5-7. Rule-making authority.

1 (a) The board shall propose rules for legislative approval, in
2 accordance with the provisions of article three, chapter

3 twenty-nine-a of this code, to implement the provisions of this
4 article, and articles two, three, eight, nine and ten of chapter
5 sixty-A including:

6 (1) Standards and requirements for a license, permit and
7 registration;

8 (2) Educational and experience requirements;

9 (3) Procedures for examinations and reexaminations;

10 (4) Requirements for third parties to prepare, administer or
11 prepare and administer examinations and reexaminations;

12 (5) The passing grade on the examination;

13 (6) Procedures for the issuance and renewal of a license,
14 permit and registration;

15 (7) A fee schedule;

16 (8) Continuing education requirements;

17 (9) Set standards for professional conduct;

18 (10) Establish equipment and facility standards for
19 pharmacies;

20 (11) Approve courses and standards for training pharmacist
21 technicians;

22 (12) Regulation of charitable clinic pharmacies;

23 (13) Regulation of mail order pharmacies: *Provided*, That
24 until the board establishes requirements that provide further
25 conditions for pharmacists whom consult with or who provide
26 pharmacist care to patients regarding prescriptions dispensed in
27 this state by a mail order pharmacy, the pharmacist in charge of
28 the out-of-state mail order pharmacy shall be licensed in West

29 Virginia and any other pharmacist providing pharmacist care
30 from the mail order pharmacy shall be licensed in the state where
31 the pharmacy is located.

32 (14) Agreements with organizations to form pharmacist
33 recovery networks;

34 (15) Create an alcohol or chemical dependency treatment
35 program;

36 (16) Establish a ratio of pharmacy technicians to on-duty
37 pharmacist operating in any outpatient, mail order or
38 institutional pharmacy;

39 (17) Regulation of telepharmacy;

40 (18) The minimum standards for a charitable clinic
41 pharmacy and rules regarding the applicable definition of a
42 pharmacist-in-charge, who may be a volunteer, at charitable
43 clinic pharmacies: *Provided*, That a charitable clinic pharmacy
44 may not be charged any applicable licensing fees and such
45 clinics may receive donated drugs.

46 (19) Establish standards for substituted drug products;

47 (20) Establish the regulations for E-prescribing;

48 (21) Establish the proper use of the automated data
49 processing system;

50 (22) Registration and control of the manufacture and
51 distribution of controlled substances within this state.

52 (23) Regulation of pharmacies;

53 (24) Sanitation and equipment requirements for wholesalers,
54 distributors and pharmacies.

55 (25) Procedures for denying, suspending, revoking,
56 reinstating or limiting the practice of a licensee, permittee or
57 registrant;

58 (26) Regulations on prescription paper as provided in section
59 five, article five-w, chapter sixteen;

60 (27) Regulations on controlled substances as provided in
61 article two, chapter sixty-a;

62 (28) Regulations on manufacturing, distributing, or
63 dispensing any controlled substance as provided in article three,
64 chapter sixty-a;

65 (29) Regulations on wholesale drug distribution as provided
66 in article eight, chapter sixty-a;

67 (30) Regulations on controlled substances monitoring as
68 provided in article nine, chapter sixty-a;

69 (31) Regulations on Methamphetamine Laboratory
70 Eradication Act as provided in article ten, chapter sixty-a; and

71 (32) Any other rules necessary to effectuate the provisions
72 of this article.

73 (b) The board may provide an exemption to the
74 pharmacist-in-charge requirement for the opening of a new retail
75 pharmacy or during a declared emergency;

76 (c) The board, the Board of Medicine and the Board of
77 Osteopathic Medicine shall jointly agree and propose rules
78 concerning collaborative pharmacy practice for legislative
79 approval in accordance with the provisions of article three,
80 chapter twenty-nine-a of the code;

81 (d) The board with the advice of the Board of Medicine and
82 the Board of Osteopathic Medicine shall propose rules for
83 legislative approval in accordance with the provisions of article
84 three, chapter twenty-nine-a of this code to perform influenza
85 and pneumonia immunizations, on a person of eighteen years of
86 age or older. These rules shall provide, at a minimum, for the
87 following:

88 (1) Establishment of a course, or provide a list of approved
89 courses, in immunization administration. The courses shall be
90 based on the standards established for such courses by the
91 Centers for Disease Control and Prevention in the public health
92 service of the United States Department of Health and Human
93 Services;

94 (2) Definitive treatment guidelines which shall include, but
95 not be limited to, appropriate observation for an adverse reaction
96 of an individual following an immunization;

97 (3) Prior to administration of immunizations, a pharmacist
98 shall have completed a board approved immunization
99 administration course and completed an American Red Cross or
100 American Heart Association basic life-support training, and
101 maintain certification in the same.

102 (4) Continuing education requirements for this area of
103 practice;

104 (5) Reporting requirements for pharmacists administering
105 immunizations to report to the primary care physician or other
106 licensed health care provider as identified by the person
107 receiving the immunization;

108 (6) Reporting requirements for pharmacists administering
109 immunizations to report to the West Virginia Statewide
110 Immunization Information (WVSI);

111 (7) That a pharmacist may not delegate the authority to
112 administer immunizations to any other person; unless
113 administered by a licensed pharmacy intern under the direct
114 supervision of a pharmacist of whom both pharmacist and intern
115 have successfully completed all board required training.

116 (8) Any other provisions necessary to implement the
117 provisions of this section.

118 (e) The board, the Board of Medicine and the Board of
119 Osteopathic Medicine shall propose joint rules for legislative
120 approval in accordance with the provisions of article three,
121 chapter twenty-nine-a of this code to permit licensed pharmacists
122 to administer other immunizations such as Hepatitis A, Hepatitis
123 B, Herpes Zoster and Tetanus. These rules shall provide, at a
124 minimum, the same provisions contained in subsection (d)(1)
125 through (d)(8) of this section.

126 (f) All of the board's rules in effect and not in conflict with
127 these provisions, shall remain in effect until they are amended or
128 rescinded.

§30-5-8. Fees; special revenue account; administrative fines.

1 (a) All fees and other moneys, except fines, received by the
2 board shall be deposited in a separate special revenue fund in the
3 State Treasury designated the "Board of Pharmacy Fund", which
4 fund is continued. The fund is used by the board for the
5 administration of this article. Except as may be provided in
6 article one of this chapter, the board shall retain the amounts in
7 the special revenue account from year to year. Any
8 compensation or expense incurred under this article is not a
9 charge against the General Revenue Fund.

10 (b) The board shall deposit any amounts received as
11 administrative fines imposed pursuant to this article into the
12 General Revenue Fund of the State Treasury.

§30-5-9. Qualifications for licensure as pharmacist.

1 (a) To be eligible for a license to practice pharmacist care
2 under the provisions of this article, the applicant shall:

3 (1) Submit a written application to the board;

4 (2) Be eighteen years of age or older;

5 (3) Pay all applicable fees;

- 6 (4) Graduate from an accredited school of pharmacy;
- 7 (5) Complete at least fifteen hundred hours of internship in
8 a pharmacy under the instruction and supervision of a
9 pharmacist;
- 10 (6) Pass an examination or examinations approved by the
11 board;
- 12 (7) Not be an alcohol or drug abuser, as these terms are
13 defined in section eleven, article one-a, chapter twenty-seven of
14 this code: *Provided*, That an applicant in an active recovery
15 process, which may, in the discretion of the board, be evidenced
16 by participation in a twelve-step program or other similar group
17 or process, may be considered;
- 18 (8) Present to the board satisfactory evidence that he or she
19 is a person of good moral character, has not been convicted of a
20 felony involving controlled substances or violent crime;
- 21 (9) Not been convicted in any jurisdiction of a felony or any
22 crime which bears a rational nexus to the individual's ability to
23 practice pharmacist care; and
- 24 (10) Has fulfilled any other requirement specified by the
25 board in rule.
- 26 (b) An applicant from another jurisdiction shall comply with
27 all the requirements of this article.

§30-5-10. Scope practice for licensed pharmacist.

- 1 (a) A licensed pharmacist may:
- 2 (1) Provide care related to the interpretation, evaluation, and
3 implementation of medical orders;
- 4 (2) Dispense of prescription drug orders; participate in drug
5 and device selection;
- 6 (3) Provide drug administration;

7 (4) Provide drug regimen review;

8 (5) Provide drug or drug-related research;

9 (6) Perform patient counseling;

10 (7) Provide pharmacy related primary care;

11 (8) Provide pharmacist care in all areas of patient care,
12 including collaborative pharmacy practice;

13 (9) Compound and label drugs and drug devices;

14 (10) Proper and safe storage of drugs and devices;

15 (11) Maintain proper records;

16 (12) Provide patient counseling concerning the therapeutic
17 value and proper use of drugs and devices;

18 (13) Order laboratory tests in accordance with drug therapy
19 management; and

20 (14) Provide medication therapy management.

21 (b) A licensee meeting the requirements as promulgated by
22 legislative rule may administer immunizations.

23 (c) The sale of any medicine, if the contents of its container,
24 or any part thereof, taken at one time, are likely to prove
25 poisonous, deleterious, or habit-forming is prohibited by any
26 person other than a registered pharmacist, who shall take
27 precautions to acquaint the purchaser of the nature of the
28 medicine at the time of sale.

§30-5-11. Registration of pharmacy technicians.

1 (a) To be eligible for registration as a pharmacy technician
2 to assist in the practice of pharmacist care, the applicant shall:

3 (1) Submit a written application to the board;

4 (2) Pay the applicable fees;

5 (3) Have graduated from high school or obtained a
6 Certificate of General Educational Development (GED) or
7 equivalent;

8 (4) Have:

9 (A) Graduated from a competency-based pharmacy
10 technician education and training program as approved by
11 legislative rule of the board; or

12 (B) Completed a pharmacy provided, competency-based
13 education and training program approved by the board;

14 (5) Effective July 1, 2014, have successfully passed an
15 examination developed using nationally recognized and
16 validated psychometric and pharmacy practice standards
17 approved by the board;

18 (6) Not be an alcohol or drug abuser, as these terms are
19 defined in section eleven, article one-a, chapter twenty-seven of
20 this code: *Provided*, That an applicant in an active recovery
21 process, which may, in the discretion of the board, be evidenced
22 by participation in a twelve-step program or other similar group
23 or process, may be considered;

24 (8) Not have been convicted of a felony in any jurisdiction
25 within ten years preceding the date of application for license,
26 which conviction remains unreversed;

27 (9) Not have been convicted of a misdemeanor or felony in
28 any jurisdiction if the offense for which he or she was convicted
29 bearing a rational nexus to the practice of pharmacist care, which
30 conviction remains unreversed; and

31 (10) Have fulfilled any other requirement specified by the
32 board in rule.

33 (b) A person whose license to practice pharmacist care has
34 been denied, revoked, suspended, or restricted for disciplinary

35 purposes in any jurisdiction is not eligible to be registered as a
36 pharmacy technician.

37 (c) A person registered to assist in the practice pharmacist
38 care issued by the board prior to June 30, 2014, shall for all
39 purposes be considered registered under this article and may
40 renew pursuant to the provisions of this article.

§30-5-12. Scope practice for registered pharmacy technician.

1 (a) A registered pharmacy technician shall, under the direct
2 supervision of the licensed pharmacist, perform at a minimum
3 the following:

4 (1) Assist in the dispensing process;

5 (2) Receive new written or electronic prescription drug
6 orders;

7 (3) Compound; and

8 (4) Stock medications.

9 (b) A registered pharmacy technician may perform the
10 following under indirect supervision of a licensed pharmacist:

11 (1) Process medical coverage claims; and

12 (2) Cashier.

13 (c) A registered pharmacy technician may not perform the
14 following:

15 (1) Drug regimen review;

16 (2) Clinical conflict resolution;

17 (3) Contact a prescriber concerning prescription drug order
18 clarification or therapy modification;

19 (4) Patient counseling;

20 (5) Dispense process validation;

21 (6) Prescription transfer; and

22 (7) Receive new oral prescription drug orders.

23 (d) Indirect supervision of a registered pharmacy technician
24 is permitted to allow a pharmacist to take one break of no more
25 than thirty minutes during any contiguous eight-hour period. The
26 pharmacist may leave the pharmacy area but may not leave the
27 building during the break. When a pharmacist is on break, a
28 pharmacy technician may continue to prepare prescriptions for
29 the pharmacist's verification. A prescription may not be
30 delivered until the pharmacist has verified the accuracy of the
31 prescription, and counseling, if required, has been provided to or
32 refused by the patient.

33 (e) A pharmacy that permits indirect supervision of a
34 pharmacy technician during a pharmacist's break shall have
35 either an interactive voice response system or a voice mail
36 system installed on the pharmacy phone line in order to receive
37 new prescription orders and refill authorizations during the
38 break.

39 (f) The pharmacy shall establish protocols that require a
40 registered pharmacy technician to interrupt the pharmacist's
41 break if an emergency arises.

§30-5-13. Pharmacist interns.

1 (a) To be eligible for a license to assist in the practice of
2 pharmacist care as a pharmacy intern, the applicant shall be:

3 (1) Enrolled and progressing to obtain a degree in a
4 professional degree program of a school or college of pharmacy
5 that has been approved by the board, and is satisfactorily
6 progressing toward meeting the requirements for licensure as a
7 pharmacist; or

8 (2) A graduate of an approved professional degree program
9 of a school or college of pharmacy or a graduate who has
10 established educational equivalency by obtaining a Foreign
11 Pharmacy Graduate Examination Committee Certificate, who is
12 currently licensed by the board for the purpose of obtaining
13 practical experience as a requirement for licensure as a
14 pharmacist; or

15 (3) A qualified applicant awaiting examination for licensure
16 or meeting board requirements for relicensure; or

17 (4) An individual participating in a pharmacy residency or
18 fellowship program.

**§30-5-14. Prohibiting the dispensing of prescription orders in
absence of practitioner-patient relationship.**

1 A pharmacist may not compound or dispense any
2 prescription order when he or she has knowledge that the
3 prescription was issued by a practitioner without establishing a
4 valid practitioner-patient relationship. An online or telephonic
5 evaluation by questionnaire, or an online or telephonic
6 consultation, is inadequate to establish a valid
7 practitioner-patient relationship: *Provided*, That this prohibition
8 does not apply:

9 (1) In a documented emergency;

10 (2) In an on-call or cross-coverage situation; or

11 (3) Where patient care is rendered in consultation with
12 another practitioner who has an ongoing relationship with the
13 patient and who has agreed to supervise the patient's treatment,
14 including the use of any prescribed medications.

**§30-5-15. Reciprocal licensure of pharmacists from other states
or countries.**

1 (a) The board may by reciprocity license pharmacists in this
2 state who have been authorized to practice pharmacist care in

3 another state: *Provided*, That the applicant for licensure meets
4 the requirements of the rules for reciprocity promulgated by the
5 board in accordance with the provisions of chapter twenty-nine-a
6 of this code: *Provided, however*, That reciprocity is not
7 authorized for pharmacists from another state where that state
8 does not permit reciprocity to pharmacists licensed in West
9 Virginia.

10 (b) The board may refuse reciprocity to pharmacists from
11 another country unless the applicant qualifies under the
12 legislative rules as may be promulgated by the board for
13 licensure of foreign applicants.

§30-5-16. Renewal requirements.

1 (a) All persons regulated by this article shall annually or
2 biannually, renew his or her board authorization by completing
3 a form prescribed by the board and submitting any other
4 information required by the board.

5 (b) The board shall charge a fee for each renewal of an board
6 authorization and shall charge a late fee for any renewal not paid
7 by the due date.

8 (c) The board shall require as a condition of renewal that
9 each licensee or registrant complete continuing education.

10 (d) The board may deny an application for renewal for any
11 reason which would justify the denial of an original application.

12 (e) After June 30, 2014, a previously registered pharmacy
13 technician may renew his or her current registration without
14 having successfully completed the requirements of subdivision
15 six, subsection (a), of section eleven. The previously registered
16 pharmacist may continue to renew his or her registration under
17 this provision.

§30-5-17. Special volunteer pharmacist license; civil immunity for voluntary services rendered to indigents.

1 (a) There is a special volunteer pharmacist license for
2 pharmacists retired or retiring from the active practice of
3 pharmacist care who wish to donate their expertise for the
4 pharmacist care and treatment of indigent and needy patients in
5 the clinic setting of clinics organized, in whole or in part, for the
6 delivery of health care services without charge. The special
7 volunteer pharmacist license shall be issued by the board to
8 pharmacists licensed or otherwise eligible for licensure under
9 this article and the legislative rules promulgated hereunder
10 without the payment of an application fee, license fee or renewal
11 fee, and the initial license shall be issued for the remainder of the
12 licensing period, and renewed consistent with the boards other
13 licensing requirements. The board shall develop application
14 forms for the special license provided in this subsection which
15 shall contain the pharmacist's acknowledgment that:

16 (1) The pharmacist's practice under the special volunteer
17 pharmacist license shall be exclusively devoted to providing
18 pharmacist care to needy and indigent persons in West Virginia;

19 (2) The pharmacist may not receive any payment or
20 compensation, either direct or indirect, or have the expectation
21 of any payment or compensation, for any pharmacist care
22 rendered under the special volunteer pharmacist license;

23 (3) The pharmacist will supply any supporting
24 documentation that the board may reasonably require; and

25 (4) The pharmacist agrees to continue to participate in
26 continuing professional education as required by the board for
27 the special volunteer pharmacist license.

28 (b) Any pharmacist who renders any pharmacist care to
29 indigent and needy patients of a clinic organized, in whole or in
30 part, for the delivery of health care services without charge under

31 a special volunteer pharmacist license authorized under
32 subsection (a) of this section without payment or compensation
33 or the expectation or promise of payment or compensation is
34 immune from liability for any civil action arising out of any act
35 or omission resulting from the rendering of the pharmacist care
36 at the clinic unless the act or omission was the result of the
37 pharmacist's gross negligence or willful misconduct. In order
38 for the immunity under this subsection to apply, there shall be a
39 written agreement between the pharmacist and the clinic
40 pursuant to which the pharmacist provides voluntary
41 uncompensated pharmacist care under the control of the clinic to
42 patients of the clinic before the rendering of any services by the
43 pharmacist at the clinic: *Provided*, That any clinic entering into
44 such written agreement is required to maintain liability coverage
45 of not less than \$1 million per occurrence.

46 (c) Notwithstanding the provisions of subsection (b) of this
47 section, a clinic organized, in whole or in part, for the delivery
48 of health care services without charge is not relieved from
49 imputed liability for the negligent acts of a pharmacist rendering
50 voluntary pharmacist care at or for the clinic under a special
51 volunteer pharmacist license authorized under subsection (a) of
52 this section.

53 (d) For purposes of this section, "otherwise eligible for
54 licensure" means the satisfaction of all the requirements for
55 licensure as listed in section nine of this article and in the
56 legislative rules promulgated thereunder, except the fee
57 requirements of that section and of the legislative rules
58 promulgated by the board relating to fees.

59 (e) Nothing in this section may be construed as requiring the
60 board to issue a special volunteer pharmacist license to any
61 pharmacist whose license is or has been subject to any
62 disciplinary action or to any pharmacist who has surrendered a
63 license or caused such license to lapse, expire and become
64 invalid in lieu of having a complaint initiated or other action

65 taken against his or her license, or who has elected to place a
66 pharmacist license in inactive status in lieu of having a
67 complaint initiated or other action taken against his or her
68 license, or who has been denied a pharmacist license.

69 (f) Any policy or contract of liability insurance providing
70 coverage for liability sold, issued or delivered in this state to any
71 pharmacist covered under the provisions of this article shall be
72 read so as to contain a provision or endorsement whereby the
73 company issuing such policy waives or agrees not to assert as a
74 defense on behalf of the policyholder or any beneficiary thereof,
75 to any claim covered by the terms of such policy within the
76 policy limits, the immunity from liability of the insured by
77 reason of the care and treatment of needy and indigent patients
78 by a pharmacist who holds a special volunteer pharmacist
79 license.

§30-5-18. Pharmacist requirements to participate in a collaborative pharmacy practice agreement.

1 For a pharmacist to participate in a collaborative pharmacy
2 practice agreement, the pharmacist shall:

3 (a) Have an unrestricted and current license to practice as a
4 pharmacist in West Virginia;

5 (b) Personally have or have employer coverage of at least \$1
6 million of professional liability insurance coverage;

7 (c) Meet one of the following qualifications, at a minimum:

8 (1) Earned a Certification from the Board of Pharmaceutical
9 Specialties, is a Certified Geriatric Practitioner, or has completed
10 an American Society of Health System Pharmacists (ASHP)
11 accredited residency program, which includes two years of
12 clinical experience approved by the board; or

13 (2) Successfully completed the course of study and holds the
14 academic degree of Doctor of Pharmacy and has three years of

15 clinical experience approved by the board and has completed an
16 Accreditation Council for Pharmacy Education (ACPE)
17 approved practice based continuing pharmacy education activity
18 in the area of practice covered by the collaborative pharmacy
19 practice agreement; or

20 (3) Successfully completed the course of study and hold the
21 academic degree of Bachelor of Science in Pharmacy and has
22 five years of clinical experience approved by the board and has
23 completed two ACPE approved practice based continuing
24 pharmacy education activity with at least one program in the
25 area of practice covered by a collaborative pharmacy practice
26 agreement.

§30-5-19. Collaborative pharmacy practice agreement.

1 (a) A pharmacist engaging in collaborative pharmacy
2 practice shall have on file at his or her place of practice the
3 collaborative pharmacy practice agreement. The existence and
4 subsequent termination of the agreement and any additional
5 information the rules may require concerning the agreement,
6 including the agreement itself, shall be made available to the
7 appropriate licensing board for review upon request. The
8 agreement may allow the pharmacist, within the pharmacist's
9 scope of practice pursuant to the collaborative pharmacy practice
10 agreement, to conduct drug therapy management activities
11 approved by the collaborating physician. The collaborative
12 pharmacy practice agreement shall be a voluntary process, which
13 is a physician directed approach, that is entered into between an
14 individual physician or physician group, an individual
15 pharmacist or pharmacists and an individual patient or the
16 patient's authorized representative who has given informed
17 consent as per subsection (c).

18 (b) A collaborative pharmacy practice agreement may
19 authorize a pharmacist to provide drug therapy management. In
20 instances where drug therapy is discontinued, the pharmacist

21 shall notify the treating physician of the discontinuance in the
22 time frame and in the manner established by joint legislative
23 rules. Each protocol developed, pursuant to the collaborative
24 pharmacy practice agreement, shall contain detailed direction
25 concerning the services that the pharmacists may perform for
26 that patient. The protocol shall include, but need not be limited
27 to:

28 (1) The specific drug or drugs to be managed by the
29 pharmacist;

30 (2) The terms and conditions under which drug therapy may
31 be implemented, modified or discontinued;

32 (3) The conditions and events upon which the pharmacist is
33 required to notify the physician; and

34 (4) The laboratory tests that may be ordered in accordance
35 with drug therapy management.

36 (c) All activities performed by the pharmacist in conjunction
37 with the protocol shall be documented in the patient's medical
38 record. The pharmacists shall report at least every thirty days to
39 the physician regarding the patient's drug therapy management.
40 The collaborative pharmacy practice agreement and protocols
41 shall be available for inspection by the board, the West Virginia
42 Board of Medicine, or the West Virginia Board of Osteopathic
43 Medicine, depending on the licensing board of the participating
44 physician. A copy of the protocol shall be filed in the patient's
45 medical record.

46 (d) Collaborative pharmacy agreements may not include the
47 management of controlled substances.

48 (e) A collaborative pharmacy practice agreement, meeting
49 the requirements herein established and in accordance with joint
50 rules, shall be allowed in the hospital setting, the nursing home
51 setting, the medical school setting and the hospital,
52 community-based pharmacy setting and ambulatory care clinics.

53 The pharmacist shall be employed by or under contract to
54 provide services to the hospital, pharmacy, nursing home or
55 medical school, or hold a faculty appointment with one of the
56 schools of pharmacy or medicine in this state.

57 (f) Nothing pertaining to collaborative pharmacy practice
58 shall be interpreted to permit a pharmacist to accept delegation
59 of a physician's authority outside the limits included in the
60 appropriate board's statute and rules.

§30-5-20. Board authorizations shall be displayed.

1 (a) The board shall prescribe the form for an board
2 authorization, and may issue a duplicate upon payment of a fee.

3 (b) Any person regulated by the article shall conspicuously
4 display his or her board authorization at his or her principal
5 business location.

**§30-5-21. Responsibility for quality of drugs dispensed; exception;
falsification of labels; deviation from prescription.**

1 (a) All persons, whether licensed pharmacists or not, shall be
2 responsible for the quality of all drugs, chemicals and medicines
3 they may sell or dispense, with the exception of those sold in or
4 dispensed unchanged from the original retail package of the
5 manufacturer, in which event the manufacturer shall be
6 responsible.

7 (b) Except as provided in section twelve-b of this article, the
8 following acts shall be prohibited:

9 (1) The falsification of any label upon the immediate
10 container, box and/or package containing a drug;

11 (2) The substitution or the dispensing of a different drug in
12 lieu of any drug prescribed in a prescription without the approval
13 of the practitioner authorizing the original prescription:
14 *Provided*, That this may not be construed to interfere with the art

15 of prescription compounding which does not alter the therapeutic
16 properties of the prescription or appropriate generic substitute;

17 (3) The filling or refilling of any prescription for a greater
18 quantity of any drug or drug product than that prescribed in the
19 original prescription without a written or electronic order or an
20 oral order reduced to writing, or the refilling of a prescription
21 without the verbal, written or electronic consent of the
22 practitioner authorizing the original prescription.

§30-5-22. Pharmacies to be registered.

1 (a) A pharmacy, an ambulatory health care facility, and a
2 charitable clinic pharmacy shall register with the board.

3 (b) A person desiring to operate, maintain, open or establish
4 a pharmacy shall register with the board.

5 (c) To be eligible for a registration to operate, maintain, open
6 or establish a pharmacy the applicant shall:

7 (1) Submit a written application to the board;

8 (2) Pay all applicable fees;

9 (3) Designate a pharmacist-in-charge; and

10 (4) Successfully complete an inspection by the board.

11 (d) A separate application shall be made and separate
12 registration issued for each location.

13 (e) Registrations are not transferable.

14 (f) Registrations expire and shall be renewed annually.

15 (g) If a registration expires, the pharmacy shall be
16 reinspected and an inspection fee is required.

17 (h) A registrant shall employ a pharmacist-in-charge and
18 operate in compliance with the legislative rules governing the
19 practice of pharmacist care and the operation of a pharmacy.

20 (i) The provisions of this section do not apply to the sale of
21 nonprescription drugs which are not required to be dispensed
22 pursuant to a practitioner's prescription.

§30-5-23. Pharmacist-in-charge.

1 (a) A pharmacy shall be under the direction and supervision
2 of a licensed pharmacist who shall be designated by the owner
3 of the pharmacy as the pharmacist-in-charge: *Provided*, That the
4 Board may permit by rule for a charitable clinic pharmacy to be
5 supervised by a committee of pharmacists-in-charge who accept
6 as a group the responsibilities of the required pharmacist-
7 in-charge. This designation shall be filed with the board within
8 thirty days of the designation.

9 (b) The pharmacist-in-charge is responsible for the
10 pharmacy's compliance with state and federal pharmacy laws
11 and regulations and for maintaining records and inventory.

12 (c) A pharmacist-in-charge may not hold such designated
13 position at more than one pharmacy, whether within or outside
14 the State of West Virginia: *Provided*, That the Board may permit
15 by rule that he or she may volunteer as the pharmacist-in-charge
16 at a charitable clinic pharmacy while serving as a pharmacist-
17 in-charge in another pharmacy.

18 (d) An interim pharmacist-in-charge may be designated for
19 a period not to exceed sixty days. The request for an interim
20 pharmacist-in-charge shall detail the circumstances which
21 warrant the change. This change in designation shall be filed
22 with the board within thirty days of the designation.

§30-5-24. Permits for mail-order pharmacy.

1 (a) A mail-order pharmacy which dispenses drugs shall
2 register with the board.

3 (b) A mail-order pharmacy shall submit an application for a
4 permit to the board. The application shall require the following
5 information:

6 (1) The owner of the mail-order pharmacy, whether an
7 individual, a partnership, or a corporation.

8 (2) The names and titles of all individual owners, partners or
9 corporate officers.

10 (3) The pharmacy manager.

11 (4) The pharmacist-in-charge.

12 (5) The complete address, telephone number and fax number
13 of the mail-order pharmacy.

14 (c) This section does not apply to any mail-order pharmacy
15 which operates solely as a wholesale distributor.

**§30-5-25. Permit for manufacture and packaging of drugs,
medicines, distribution of prescription drugs.**

1 (a) Drugs may not be manufactured, made, produced,
2 packed, packaged or prepared within the state, except under the
3 personal supervision of a pharmacist or other qualified person as
4 may be approved by the board;

5 (b) A person may not manufacture, package or prepare a
6 drug without obtaining a permit from the board.

7 (c) A person, who offers for sale, sells, offers for sale
8 through the method of distribution any prescription drugs is
9 subject to this article.

10 (d) The application for a permit shall be made on a form to
11 be prescribed and furnished by the board and shall be
12 accompanied by an application fee.

13 (e) The board shall promulgate rules on permit requirements
14 and sanitation requirements.

15 (f) Separate applications shall be made and separate permits
16 issued for each place of manufacture, distribution, making,
17 producing, packing, packaging or preparation.

§30-5-26. Filling of prescriptions more than one year after issuance.

1 A prescription order may not be dispensed after twelve
2 months from the date of issuance by the practitioner. A
3 pharmacist may fill the prescription after twelve months if the
4 prescriber confirms to the pharmacist that he or she still wants
5 the prescription filled and the pharmacist documents upon the
6 prescription that the confirmation was obtained.

§30-5-27. Partial filling of prescriptions.

1 (a) The partial filling of a prescription is permissible for any
2 prescription if the pharmacist is unable to supply, or the patient
3 requests less than the full quantity called for in a written,
4 electronic, or oral prescription, provided the pharmacist makes
5 a notation of the quantity supplied on either the written
6 prescription or in the electronic record.

7 (b) The partial filling of a prescription for a controlled
8 substance listed in Schedule II is permissible if the pharmacist
9 is unable to supply or the patient requests less than the full
10 quantity called for in the prescription. The remaining portion of
11 the prescription may be filled within seventy-two hours of the
12 first partial filling: *Provided*, That if the remaining portion is not
13 or cannot be filled within the seventy-two hour period, the
14 pharmacist shall notify the prescribing individual practitioner.
15 Further quantity may not be supplied beyond seventy-two hours
16 without a new prescription.

§30-5-28. Partial filling of prescriptions for long-term care facility or terminally ill patients; requirements; records; violations.

1 (a) As used in this section, “long-term care facility” or
2 “LTCF” means any nursing home, personal care home, or

3 residential board and care home as defined in section two, article
4 five-c, chapter sixteen of this code which provides extended
5 health care to resident patients: *Provided*, That the care or
6 treatment in a household, whether for compensation or not, of
7 any person related by blood or marriage, within the degree of
8 consanguinity of second cousin to the head of the household, or
9 his or her spouse, may not be deemed to constitute a nursing
10 home, personal care home or residential board and care home
11 within the meaning of this article. This section does not apply
12 to:

13 (1) Hospitals, as defined under section one, article five-b,
14 chapter sixteen of this code or to extended care facilities
15 operated in conjunction with a hospital;

16 (2) State institutions as defined in section six, article one,
17 chapter twenty-seven or in section three, article one, chapter
18 twenty-five, all of this code;

19 (3) Nursing homes operated by the federal government;

20 (4) Facilities owned or operated by the state government;

21 (5) Institutions operated for the treatment and care of
22 alcoholic patients;

23 (6) Offices of physicians; or

24 (7) Hotels, boarding homes or other similar places that
25 furnish to their guests only a room and board.

26 (b) As used in this section, "terminally ill" means that an
27 individual has a medical prognosis that his or her life expectancy
28 is six months or less.

29 (c) Schedule II prescriptions for patients in a LTCF and for
30 terminally ill patients shall be valid for a period of sixty days
31 from the date of issue unless terminated within a shorter period
32 by the discontinuance of the medication.

33 (d) A prescription for a Schedule II controlled substance
34 written for a patient in a LTCF or for a terminally ill patient may
35 be filled in partial quantities, including, but not limited to,
36 individual dosage units. The total quantity of Schedule II
37 controlled substances dispensed in all partial filling may not
38 exceed the total quantity prescribed.

39 (1) If there is any question whether a patient may be
40 classified as having a terminal illness, the pharmacist shall
41 contact the prescribing practitioner prior to partially filling the
42 prescription.

43 (2) Both the pharmacist and the prescribing practitioner have
44 a corresponding responsibility to assure that the controlled
45 substance is for a terminally ill patient.

46 (e) The pharmacist shall record on the prescription that the
47 patient is "terminally ill" or a "LTCF patient". A prescription
48 that is partially filled and does not contain the notation
49 "terminally ill" or "LTCF patient" shall be deemed to have been
50 filled in violation of section three hundred eight, article three,
51 chapter sixty-a of this code.

52 (f) For each partial filling, the dispensing pharmacist shall
53 record on the back of the prescription, or on another appropriate
54 record which is readily retrievable, the following information:

55 (1) The date of the partial filling;

56 (2) The quantity dispensed;

57 (3) The remaining quantity authorized to be dispensed; and

58 (4) The identification of the dispensing pharmacist.

59 (g) Information pertaining to current Schedule II
60 prescriptions for terminally ill and LTCF patients may be
61 maintained in a computerized system if such a system has the
62 capability to permit either by display or printout, for each patient

63 and each medication, all of the information required by this
64 section as well as the patient's name and address, the name of
65 each medication, original prescription number, date of issue, and
66 prescribing practitioner information. The system shall also
67 allow immediate updating of the prescription record each time
68 a partial filling of the prescription is performed and immediate
69 retrieval of all information required under this section.

§30-5-29. Limitations of article.

1 (a) This article may not be construed to prevent, restrict or
2 in any manner interfere with the sale of nonnarcotic
3 nonprescription drugs which may be lawfully sold without a
4 prescription in accordance with the United States Food, Drug
5 and Cosmetic Act or the laws of this state, nor may any
6 legislative rule be adopted by the board which shall require the
7 sale of nonprescription drugs by a licensed pharmacist or in a
8 pharmacy or which shall prevent, restrict or otherwise interfere
9 with the sale or distribution of such drugs by any retail merchant.
10 The sale or distribution of nonprescription drugs may not be
11 deemed to be improperly engaging in the practice of pharmacist
12 care.

13 (b) This article may not be construed to interfere with any
14 legally qualified practitioner of medicine, dentistry or veterinary
15 medicine, who is not the proprietor of the store for the
16 dispensing or retailing of drugs and who is not in the employ of
17 such proprietor, in the compounding of his or her own
18 prescriptions or to prevent him or her from supplying to his or
19 her patients such medicines as he or she may deem proper, if
20 such supply is not made as a sale.

21 (c) The exception provided in subsection (b) of this section
22 does not apply to an ambulatory health care facility: *Provided,*
23 That a legally licensed and qualified practitioner of medicine or
24 dentistry may supply medicines to patients that he or she treats
25 in a free clinic and that he or she deems appropriate.

§30-5-30. Actions to enjoin violations.

1 (a) If the board obtains information that any person has
2 engaged in, is engaging in or is about to engage in any act which
3 constitutes or will constitute a violation of the provisions of this
4 article, the rules promulgated pursuant to this article, or a final
5 order or decision of the board, it may issue a notice to the person
6 to cease and desist in engaging in the act and/or apply to the
7 circuit court in the county of the alleged violation for an order
8 enjoining the act.

9 (b) The circuit court may issue a temporary injunction
10 pending a decision on the merits, and may issue a permanent
11 injunction based on its findings in the case.

12 (c) The judgment of the circuit court on an application
13 permitted by the provisions of this section is final unless
14 reversed, vacated or modified on appeal to the West Virginia
15 Supreme Court of Appeals.

§30-5-31. Complaints; investigations; due process procedure; grounds for disciplinary action.

1 (a) The board may initiate a complaint upon receipt of
2 credible information, and shall upon the receipt of a written
3 complaint of any person, cause an investigation to be made to
4 determine whether grounds exist for disciplinary action under
5 this article or the legislative rules promulgated pursuant to this
6 article.

7 (b) After reviewing any information obtained through an
8 investigation, the board shall determine if probable cause exists
9 that the licensee, registrant or permittee has violated subsection
10 (g) of this section or rules promulgated pursuant to this article.

11 (c) Upon a finding of probable cause to go forward with a
12 complaint, the board shall provide a copy of the complaint to the
13 licensee, registrant or permittee.

14 (d) Upon a finding that probable cause exists that the
15 licensee, registrant or permittee has violated subsection (g) of
16 this section or rules promulgated pursuant to this article, the
17 board may enter into a consent decree or hold a hearing for
18 disciplinary action against the licensee, registrant or permittee.
19 Any hearing shall be held in accordance with the provisions of
20 this article, and shall require a violation to be proven by a
21 preponderance of the evidence.

22 (e) Any member of the board or the executive director of the
23 board may issue subpoenas and subpoenas duces tecum to obtain
24 testimony and documents to aid in the investigation of
25 allegations against any person regulated by the article.

26 (f) Any member of the board or its executive director may
27 sign a consent decree or other legal document on behalf of the
28 board.

29 (g) The board may, after notice and opportunity for hearing,
30 deny or refuse to renew, suspend, restrict or revoke the license,
31 registration or permit of, or impose probationary conditions upon
32 or take disciplinary action against, any licensee, registrant or
33 permittee for any of the following reasons:

34 (1) Obtaining a board authorization by fraud, misrepresenta-
35 tion or concealment of material facts;

36 (2) Being convicted of a felony, other crime involving moral
37 turpitude or a violation of chapter sixty-a of this code.

38 (3) Being guilty of unprofessional conduct which placed the
39 public at risk, as defined by legislative rule of the board;

40 (4) Intentional violation of a lawful order or legislative rule
41 of the board;

42 (5) Having had a board authorization revoked or suspended,
43 other disciplinary action taken, or an application for a board

44 authorization revoked or suspended by the proper authorities of
45 another jurisdiction;

46 (6) Aiding or abetting unlicensed practice;

47 (7) Engaging in an act while acting in a professional capacity
48 which has endangered or is likely to endanger the health, welfare
49 or safety of the public;

50 (8) Incapacity that prevents a licensee or registrant from
51 engaging in the practice of pharmacist care or assisting in the
52 practice of pharmacist care, with reasonable skill, competence,
53 and safety to the public;

54 (9) Violation of any laws, including rules pertaining thereto,
55 of this or any other jurisdiction, relating to the practice of
56 pharmacist care, drug samples, drug manufacturing, wholesale
57 or retail drug or device distribution, or controlled substances;

58 (10) Committing fraud in connection with the practice of
59 pharmacist care;

60 (11) Disciplinary action taken by another state or jurisdiction
61 against a board authorization to practice pharmacist care based
62 upon conduct by the licensee, registrant or permittee similar to
63 conduct that would constitute grounds for actions as defined in
64 this section;

65 (12) Failure to report to the board any adverse action taken
66 by another licensing jurisdiction, government agency, law-
67 enforcement agency, or court for conduct that would constitute
68 grounds for action as defined in this section;

69 (13) Failure to report to the board one's surrender of a
70 license or authorization to practice pharmacist care in another
71 jurisdiction while under disciplinary investigation by any of
72 those authorities or bodies for conduct that would constitute
73 grounds for action as defined in this section;

74 (14) Failure to report to the board any adverse judgment,
75 settlement, or award arising from a malpractice claim related to
76 conduct that would constitute grounds for action as defined in
77 this section;

78 (15) Knowing or suspecting that a licensee or registrant is
79 incapable of engaging in the practice of pharmacist care or
80 assisting in the practice of pharmacist care, with reasonable skill,
81 competence, and safety to the public, and failing to report any
82 relevant information to the board;

83 (16) Illegal use or disclosure of protected health information;

84 (17) Engaging in any conduct that subverts or attempts to
85 subvert any licensing examination or the administration of any
86 licensing examination;

87 (18) Failure to furnish to the board or its representatives any
88 information legally requested by the board, or failure to
89 cooperate with or knowingly engaging in any conduct which
90 obstructs an investigation being conducted by the board;

91 (19) Agreeing to participate in a prescription drug product
92 conversion program promoted or offered by a manufacturer,
93 wholesaler or distributor of such product for which the
94 pharmacist or pharmacy received any form of financial
95 remuneration, or agreed to participate in a prescription drug
96 program in which the pharmacist or pharmacy is promoted or
97 offered as the exclusive provider of prescription drug products
98 or whereby in any way the public is denied, limited or influenced
99 in selecting pharmacist care or counseling;

100 (20) Violation of any of the terms or conditions of any order
101 entered in any disciplinary action.

102 (h) For the purposes of subsection (g) of this section,
103 effective July 1, 2013, disciplinary action may include:

- 104 (1) Reprimand;
- 105 (2) Probation;
- 106 (3) Restrictions;
- 107 (4) Suspension;
- 108 (5) Revocation;
- 109 (6) Administrative fine, not to exceed \$1,000 per day per
110 violation;
- 111 (7) Mandatory attendance at continuing education seminars
112 or other training;
- 113 (8) Practicing under supervision or other restriction; or
- 114 (9) Requiring the licensee, registrant or permittee to report
115 to the board for periodic interviews for a specified period of
116 time.
- 117 (i) In addition to any other sanction imposed, the board may
118 require a licensee, registrant or permittee to pay the costs of the
119 proceeding.
- 120 (j) The board may defer disciplinary action with regard to an
121 impaired licensee or registrant who voluntarily signs an
122 agreement, in a form satisfactory to the board, agreeing not to
123 practice pharmacist care and to enter an approved treatment and
124 monitoring program in accordance with the board's legislative
125 rule. This subsection, provided that this section should not apply
126 to a licensee or registrant who has been convicted of, pleads
127 guilty to, or enters a plea of nolo contendere or a conviction
128 relating to a controlled substance in any jurisdiction.
- 129 (k) A person authorized to practice under this article, who
130 reports or otherwise provides evidence of the negligence,
131 impairment or incompetence of another member of this
132 profession to the board or to any peer review organization, is not

133 liable to any person for making such a report if such report is
134 made without actual malice and in the reasonable belief that such
135 report is warranted by the facts known to him or her at the time.

§30-5-32. Procedures for hearing; right of appeal.

1 (a) Hearings are governed by the provisions of section eight,
2 article one of this chapter.

3 (b) The board may conduct the hearing or elect to have an
4 administrative law judge conduct the hearing.

5 (c) If the hearing is conducted by an administrative law
6 judge, at the conclusion of a hearing he or she shall prepare a
7 proposed written order containing findings of fact and
8 conclusions of law. The proposed order may contain proposed
9 disciplinary actions if the board so directs. The board may
10 accept, reject or modify the decision of the administrative law
11 judge.

12 (d) Any member or the executive director of the board has
13 the authority to administer oaths, examine any person under oath
14 and issue subpoenas and subpoenas duces tecum.

15 (e) If, after a hearing, the board determines the licensee,
16 registrant or permittee has violated provisions of this article or
17 the board's rules, a formal written decision shall be prepared
18 which contains findings of fact, conclusions of law and a specific
19 description of the disciplinary actions imposed.

§30-5-33. Judicial review.

1 Any person adversely affected by a decision of the board
2 entered after a hearing may obtain judicial review of the decision
3 in accordance with section four, article five, chapter
4 twenty-nine-a of this code, and may appeal any ruling resulting
5 from judicial review in accordance with article six, chapter
6 twenty-nine-a of this code.

§30-5-34. Criminal offenses.

1 When, as a result of an investigation under this article or
2 otherwise, the board has reason to believe that a person
3 authorized under this article has committed a criminal offense
4 the board may bring its information to the attention of an
5 appropriate law-enforcement official.

**CHAPTER 60A. UNIFORM CONTROLLED
SUBSTANCES ACT.****ARTICLE 8. WHOLESALE DRUG DISTRIBUTION
LICENSING ACT OF 1991.****§60A-8-7. Wholesale drug distributor licensing requirements.**

1 (a) Every applicant for a license under this article shall
2 provide the board with the following as part of the application
3 for a license and as part of any renewal of such license:

4 (1) The name, full business address and telephone number of
5 the licensee;

6 (2) All trade or business names used by the licensee;

7 (3) Addresses, telephone numbers and the names of contact
8 persons for all facilities used by the licensee for the storage,
9 handling and distribution of prescription drugs;

10 (4) The type of ownership or operation (i.e., partnership,
11 corporation or sole proprietorship);

12 (5) The name(s) of the owner and operator, or both, of the
13 licensee, including:

14 (A) If a person, the name of the person;

15 (B) If a partnership, the name of each partner and the name
16 of the partnership;

17 (C) If a corporation, the name and title of each corporate
18 officer and director, the corporate names and the name of the
19 state of incorporation; and

20 (D) If a sole proprietorship, the full name of the sole
21 proprietor and the name of the business entity; and

22 (6) Any other information or documentation that the board
23 may require.

24 (b) All wholesale distributors and pharmacy distributors
25 shall be subject to the following requirements:

26 (1) No person or distribution outlet may act as a wholesale
27 drug distributor without first obtaining a license to do so from
28 the Board of Pharmacy and paying any reasonable fee required
29 by the Board of Pharmacy, such fee not to exceed four hundred
30 dollars per year: *Provided*, That for licenses that are effective on
31 and after July 1, 2012, the annual fee shall be \$750 per license
32 until modified by legislative rule. All fees collected pursuant to
33 this section shall be used for the operation and implementation
34 of the West Virginia Controlled Substances Monitoring Program
35 database or in the same manner as those fees governed by article
36 five, chapter thirty of this code.

37 (2) The Board of Pharmacy may grant a temporary license
38 when a wholesale drug distributor first applies to the board for
39 a wholesale drug distributor's license and the temporary license
40 shall remain valid until the Board of Pharmacy finds that the
41 applicant meets or fails to meet the requirements for regular
42 licensure, except that no temporary license shall be valid for
43 more than ninety days from the date of issuance. Any temporary
44 license issued pursuant to this subdivision shall be renewable for
45 a similar period of time not to exceed ninety days pursuant to
46 policies and procedures to be prescribed by the Board of
47 Pharmacy.

48 (3) No license may be issued or renewed for a wholesale
49 drug distributor to operate unless the distributor operates in a
50 manner prescribed by law and according to the rules
51 promulgated by the Board of Pharmacy with respect thereto.

52 (4) The Board of Pharmacy may require a separate license
53 for each facility directly or indirectly owned or operated by the
54 same business entity within this state, or for a parent entity with
55 divisions, subsidiaries, or affiliate companies within this state
56 when operations are conducted at more than one location and
57 there exists joint ownership and control among all the entities.

58 (c) The minimum qualifications for licensure are set forth in
59 this section as follows:

60 (1) As a condition for receiving and retaining any wholesale
61 drug distributor license issued pursuant to this article, each
62 applicant shall satisfy the Board of Pharmacy that it has and will
63 continuously maintain:

64 (A) Acceptable storage and handling conditions plus
65 facilities standards;

66 (B) Minimum liability and other insurance as may be
67 required under any applicable federal or state law;

68 (C) A security system which includes after hours central
69 alarm or comparable entry detection capability, restricted
70 premises access, adequate outside perimeter lighting,
71 comprehensive employment applicant screening and safeguards
72 against employee theft;

73 (D) An electronic, manual or any other reasonable system of
74 records describing all wholesale distributor activities governed
75 by this article for the two-year period following disposition of
76 each product and being reasonably accessible as defined by
77 Board of Pharmacy regulations during any inspection authorized
78 by the Board of Pharmacy;

79 (E) Officers, directors, managers and other persons in charge
80 of wholesale drug distribution, storage and handling, who must
81 at all times demonstrate and maintain their capability of
82 conducting business according to sound financial practices as
83 well as state and federal law;

84 (F) Complete, updated information to be provided to the
85 Board of Pharmacy as a condition for obtaining and retaining a
86 license about each wholesale distributor to be licensed under this
87 article including all pertinent licensee ownership and other key
88 personnel and facilities information determined necessary for
89 enforcement of this article;

90 (G) Written policies and procedures which assure reasonable
91 wholesale distributor preparation for protection against and
92 handling of any facility security or operation problems,
93 including, but not limited to, those caused by natural disaster or
94 government emergency, inventory inaccuracies or product
95 shipping and receiving, outdated product or other unauthorized
96 product control, appropriate disposition of returned goods and
97 product recalls;

98 (H) Sufficient inspection procedures for all incoming and
99 outgoing product shipments; and

100 (I) Operations in compliance with all federal legal
101 requirements applicable to wholesale drug distribution.

102 (2) The board of pharmacy shall consider, at a minimum, the
103 following factors in reviewing the qualifications of persons who
104 apply for a wholesale distributor license under this section or for
105 renewal of that license:

106 (A) Any conviction of the applicant under any federal, state
107 or local laws relating to drug samples, wholesale or retail drug
108 distribution or distribution of controlled substances;

109 (B) Any felony convictions of the applicant or any key
110 person under federal, state or local laws;

111 (C) The applicant's past experience in the manufacture or
112 distribution of prescription drugs, including, but not limited to,
113 controlled substances;

114 (D) The furnishing by the applicant of false or fraudulent
115 material in any application made in connection with drug
116 manufacturing or distribution;

117 (E) Suspension or revocation by federal, state or local
118 government of any license currently or previously held by the
119 applicant for the manufacture or distribution of any drug,
120 including, but not limited to, controlled substances;

121 (F) Compliance with licensing requirements under
122 previously granted licenses, if any;

123 (G) Whether personnel employed by the applicant in
124 wholesale drug distribution have appropriate education or
125 experience, or both education and experience, to assume
126 responsibility for positions related to compliance with the
127 requirements of this article;

128 (H) Compliance with requirements to maintain and make
129 available to the Board of Pharmacy or to federal, state or local
130 law-enforcement officials those records required by this article;
131 and

132 (I) Any other factors or qualifications the Board of Pharmacy
133 considers relevant to and consistent with the public health and
134 safety, including whether the granting of the license would not
135 be in the public interest.

136 (3) All requirements set forth in this subsection shall
137 conform to wholesale drug distributor licensing guidelines
138 formally adopted by the United States Food and Drug
139 Administration (FDA); and in case of conflict between any
140 wholesale drug distributor licensing requirement imposed by the
141 Board of Pharmacy pursuant to this subsection and any food and
142 drug administration wholesale drug distributor licensing
143 guideline, the latter shall control.

144 (d) An employee of any licensed wholesale drug distributor
145 need not seek licensure under this section and may lawfully
146 possess pharmaceutical drugs when the employee is acting in the
147 usual course of business or employment.

148 (e) The issuance of a license pursuant to this article does not
149 change or affect tax liability imposed by this state's Department
150 of Tax and Revenue on any wholesale drug distributor.

151 (f) An applicant who is awarded a license or renewal of a
152 license shall give the board written notification of any material
153 change in the information previously submitted in, or with the
154 application for the license or for renewal thereof, whichever is
155 the most recent document filed with the board, within thirty days
156 after the material change occurs or the licensee becomes aware
157 of the material change, whichever event occurs last. Material
158 changes include, but are not limited to:

159 (1) A change of the physical address or mailing address;

160 (2) A change of the responsible individual, compliance
161 officer or other executive officers or board members;

162 (3) A change of the licensee's name or trade name;

163 (4) A change in the location where the records of the
164 licensee are retained;

165 (5) The felony conviction of a key person of the licensee;
166 and

167 (6) Any other material change that the board may specify by
168 rule.

169 (g) Before denial of a license or application for renewal of
170 a license, the applicant shall be entitled to a hearing in
171 accordance with subsection (h), section eight, article one, chapter
172 thirty of this code.

173 (h) The licensing of any person as a wholesale drug
174 distributor subjects the person and the person's agents and
175 employees to the jurisdiction of the board and to the laws of this
176 state for the purpose of the enforcement of this article, article
177 five, chapter thirty of this code and the rules of the board.

178 However, the filing of an application for a license as a wholesale
179 drug distributor by, or on behalf of, any person or the licensing
180 of any person as a wholesale drug distributor may not, of itself,
181 constitute evidence that the person is doing business within this
182 state.

183 (i) The Board of Pharmacy may adopt rules pursuant to
184 section nine of this article which permit out-of-state wholesale
185 drug distributors to obtain any license required by this article on
186 the basis of reciprocity to the extent that: (1) An out-of-state
187 wholesale drug distributor possesses a valid license granted by
188 another state pursuant to legal standards comparable to those
189 which must be met by a wholesale drug distributor of this state
190 as prerequisites for obtaining a license under the laws of this
191 state; and (2) such other state would extend reciprocal treatment
192 under its own laws to a wholesale drug distributor of this state.

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-3. Definitions.

1 In this article:

2 (a) "Board of Pharmacy" or "board" means the West
3 Virginia Board of Pharmacy established by the provisions of
4 article five, chapter thirty of this code.

5 (b) "Designated precursor" means any drug product made
6 subject to the requirements of this article by the provisions of
7 section ten of this article.

8 (c) "Distributor" means any person within this state or
9 another state, other than a manufacturer or wholesaler, who sells,
10 delivers, transfers or in any manner furnishes a drug product to
11 any person who is not the ultimate user or consumer of the
12 product.

13 (d) "Drug product" means a pharmaceutical product that
14 contains ephedrine, pseudoephedrine or phenylpropanolamine or
15 a substance identified on the supplemental list provided in
16 section seven of this article which may be sold without a
17 prescription and which is labeled for use by a consumer in
18 accordance with the requirements of the laws and rules of this
19 state and the federal government.

20 (e) "Ephedrine" means ephedrine, its salts or optical isomers
21 or salts of optical isomers.

22 (f) "Manufacturer" means any person within this state who
23 produces, compounds, packages or in any manner initially
24 prepares for sale or use any drug product or any such person in
25 another state if they cause the products to be compounded,
26 packaged or transported into this state.

27 (g) "National Association of Drug Diversion Investigators"
28 or "NADDI" means the non-profit 501(c)(3) organization
29 established in 1989, made up of members who are responsible
30 for investigating and prosecuting pharmaceutical drug diversion,
31 and that facilitates cooperation between law enforcement, health
32 care professionals, state regulatory agencies and pharmaceutical
33 manufacturers in the investigation and prevention of prescription
34 drug abuse and diversion.

35 (h) "Multi-State Real-Time Tracking System" or
36 "MSRTTS" means the real-time electronic logging system
37 provided by NADDI at no cost to states that have legislation
38 requiring real-time electronic monitoring of precursor purchases,
39 and agree to use the system. MSRTTS is used by pharmacies
40 and law enforcement to track sales of over-the-counter (OTC)
41 cold and allergy medications containing precursors to the illegal
42 drug, methamphetamine.

43 (i) "Phenylpropanolamine" means phenylpropanolamine, its
44 salts, optical isomers and salts of optical isomers.

45 (j) "Pseudoephedrine" means pseudoephedrine, its salts,
46 optical isomers and salts of optical isomers.

47 (k) "Precursor" means any substance which may be used
48 along with other substances as a component in the production
49 and distribution of illegal methamphetamine.

50 (l) "Pharmacist" means an individual currently licensed by
51 this state to engage in the practice of pharmacist care as defined
52 in article five, chapter thirty of this code.

53 (m) "Pharmacy intern" has the same meaning as the term
54 "intern" as set forth in section one-b, article five, chapter thirty
55 of this code.

56 (n) "Pharmacy" means any drugstore, apothecary or place
57 within this state where drugs are dispensed and sold at retail or
58 display for sale at retail and pharmacist care is provided outside
59 of this state where drugs are dispensed and pharmacist care is
60 provided to residents of this state.

61 (o) "Pharmacy counter" means an area in the pharmacy
62 restricted to the public where controlled substances are stored
63 and housed and where controlled substances may only be sold,
64 transferred or dispensed by a pharmacist, pharmacy intern or
65 pharmacy technician.

66 (p) "Pharmacy technician" means a registered technician
67 who meets the requirements for registration as set forth in article
68 five, chapter thirty of this code.

69 (q) "Retail establishment" means any entity or person within
70 this state who sells, transfers or distributes goods, including
71 over-the-counter drug products, to an ultimate consumer.

72 (r) "Schedule V" means the schedule of controlled
73 substances set out in section two hundred twelve, section two of
74 this chapter.

75 (s) "Superintendent of the State Police" or "Superintendent"
76 means the Superintendent of the West Virginia State Police as
77 set forth in section five, article two, chapter fifteen of this code.

78 (t) "Wholesaler" means any person within this state or
79 another state, other than a manufacturer, who sells, transfers or
80 in any manner furnishes a drug product to any other person in
81 this state for the purpose of being resold.

**§60A-10-5. Restrictions on the sale, transfer or delivery of certain
drug products; penalties.**

1 (a) No pharmacy or individual may display, offer for sale or
2 place a drug product containing ephedrine, pseudoephedrine or
3 phenylpropanolamine or other designated precursor where the
4 public may freely access the drug product. All such drug
5 products or designated precursors shall be placed behind a
6 pharmacy counter where access is restricted to a pharmacist, a
7 pharmacy intern, a pharmacy technician or other pharmacy
8 employee.

9 (b) All storage of drug products regulated by the provisions
10 of this section shall be in a controlled and locked access location
11 that is not accessible by the general public and shall maintain
12 strict inventory control standards and complete records of
13 quantity of the product maintained in bulk form.

14 (c) No pharmacy may sell, deliver or provide any drug
15 product regulated by the provisions of this section to any person
16 who is under the age of eighteen.

17 (d) If a drug product regulated by the provisions of this
18 section is transferred, sold or delivered, the individual, pharmacy
19 or retail establishment transferring, selling or delivering the drug
20 product shall offer to have a pharmacist provide patient
21 counseling, as defined by article five, chapter thirty of this code
22 and the rules of the Board of Pharmacy, to the person
23 purchasing, receiving or acquiring the drug product in order to

24 improve the proper use of the drug product and to discuss
25 contraindications.

26 (e) If a drug product regulated by the provisions of this
27 section is transferred, sold or delivered, the individual, pharmacy
28 or retail establishment transferring, selling or delivering the drug
29 product shall require the person purchasing, receiving or
30 otherwise acquiring the drug product to:

31 (1) Produce a valid government-issued photo identification
32 showing his or her date of birth; and

33 (2) Sign a logbook, in either paper or electronic format,
34 containing the information set forth in subsection (b), section
35 eight of this article and attesting to the validity of the
36 information.

37 (f) Any person who knowingly makes a false representation
38 or statement pursuant to the requirements of this section is guilty
39 of a misdemeanor and, upon conviction, be confined in a jail for
40 not more than six months, fined not more than \$5,000, or both
41 fined and confined.

42 (g) (1) The pharmacist, pharmacy intern or pharmacy
43 technician processing the transaction shall determine that the
44 name entered in the logbook corresponds to the name provided
45 on the identification.

46 (2) Beginning January 1, 2013, a pharmacy or retail
47 establishment shall, before completing a sale under this section,
48 electronically submit the information required by section eight
49 of this article to the Multi-State Real-Time Tracking System
50 (MSRTTS) administered by the National Association of Drug
51 Diversion Investigators (NADDI): *Provided*. That the system is
52 available to retailers in the state without a charge for accessing
53 the system. This system shall be capable of generating a stop-
54 sale alert, which shall be a notification that completion of the
55 sale would result in the seller or purchaser violating the quantity

56 limits set forth in this article. The seller may not complete the
57 sale if the system generates a stop-sale alert. The system shall
58 contain an override function that may be used by a dispenser of
59 a drug product who has a reasonable fear of imminent bodily
60 harm if he or she does not complete a sale. Each instance in
61 which the override function is utilized shall be logged by the
62 system. Absent negligence, wantonness, recklessness or
63 deliberate misconduct, any retailer utilizing the Multi-State
64 Real-Time Tracking System in accordance with this subdivision
65 may not be civilly liable as a result of any act or omission in
66 carrying out the duties required by this subdivision and is
67 immune from liability to any third party unless the retailer has
68 violated any provision of this subdivision in relation to a claim
69 brought for the violation.

70 (3) If a pharmacy or retail establishment selling a
71 nonprescription product containing ephedrine, pseudoephedrine
72 or phenylpropanolamine experiences mechanical or electronic
73 failure of the Multi-State Real-Time Tracking System and is
74 unable to comply with the electronic sales tracking requirement,
75 the pharmacy or retail establishment shall maintain a written log
76 or an alternative electronic record keeping mechanism until such
77 time as the pharmacy or retail establishment is able to comply
78 with the electronic sales tracking requirement.

79 (h) This section does not apply to drug products that are
80 dispensed pursuant to a prescription, are pediatric products
81 primarily intended for administration, according to label
82 instructions, to children under twelve years of age.

83 (i) Any violation of this section is a misdemeanor,
84 punishable upon conviction by a fine in an amount not more than
85 \$10,000.

86 (j) The provisions of this section supersede and preempt all
87 local laws, ordinances, rules and regulations pertaining to the
88 sale of any compounds, mixtures or preparation containing
89 ephedrine, pseudoephedrine or phenylpropanolamine.

CHAPTER 149

(S. B. 214 - By Senators Stollings and Snyder)

[Passed April 12, 2013; in effect July 1, 2013.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §30-3-10 of the Code of West Virginia, 1931, as amended, relating generally to requirements of applicants for a license to practice medicine and surgery or podiatry; eliminating the requirement for all licensure applicants to appear for a personal interview with the Board of Medicine in certain circumstances; and authorizing the board to require applicants, on a case-by-case basis, to appear for a personal interview or to produce original documents for review by the board.

Be it enacted by the Legislature of West Virginia:

That §30-3-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

1 (a) The board shall issue a license to practice medicine and
2 surgery or to practice podiatry to any individual who is qualified
3 to do so in accordance with the provisions of this article.

4 (b) For an individual to be licensed to practice medicine and
5 surgery in this state, he or she must meet the following
6 requirements:

7 (1) He or she shall submit an application to the board on a
8 form provided by the board and remit to the board a reasonable

9 fee, the amount of the reasonable fee to be set by the board. The
10 application must, as a minimum, require a sworn and notarized
11 statement that the applicant is of good moral character and that
12 he or she is physically and mentally capable of engaging in the
13 practice of medicine and surgery;

14 (2) He or she must provide evidence of graduation and
15 receipt of the degree of doctor of medicine or its equivalent from
16 a school of medicine, which is approved by the liaison
17 committee on medical education or by the board;

18 (3) He or she must submit evidence to the board of having
19 successfully completed a minimum of one year of graduate
20 clinical training in a program approved by the Accreditation
21 Council for Graduate Medical Education; and

22 (4) He or she must pass an examination approved by the
23 board, which examination can be related to a national standard.
24 The examination shall be in the English language and be
25 designed to ascertain an applicant's fitness to practice medicine
26 and surgery. The board shall before the date of examination
27 determine what will constitute a passing score: *Provided*, That
28 the board, or a majority of it, may accept in lieu of an
29 examination of applicants the certificate of the National Board
30 of Medical Examiners: *Provided, however*, That an applicant is
31 required to attain a passing score on all components or steps of
32 the examination within a period of ten consecutive years. The
33 board need not reject a candidate for a nonmaterial technical or
34 administrative error or omission in the application process that
35 is unrelated to the candidate's professional qualifications as long
36 as there is sufficient information available to the board to
37 determine the eligibility of the candidate for licensure.

38 (c) In addition to the requirements of subsection (b) of this
39 section, any individual who has received the degree of doctor of
40 medicine or its equivalent from a school of medicine located

41 outside of the United States, the Commonwealth of Puerto Rico
42 and Canada to be licensed to practice medicine in this state must
43 also meet the following additional requirements and limitations:

44 (1) He or she must be able to demonstrate to the satisfaction
45 of the board his or her ability to communicate in the English
46 language;

47 (2) Before taking a licensure examination, he or she must
48 have fulfilled the requirements of the Educational Commission
49 for Foreign Medical Graduates for certification or he or she must
50 provide evidence of receipt of a passing score on the
51 examination of the Educational Commission for Foreign Medical
52 Graduates: *Provided*, That an applicant who: (i) Is currently fully
53 licensed, excluding any temporary, conditional or restricted
54 license or permit, under the laws of another state, the District of
55 Columbia, Canada or the Commonwealth of Puerto Rico; (ii) has
56 been engaged on a full-time professional basis in the practice of
57 medicine within the state or jurisdiction where the applicant is
58 fully licensed for a period of at least five years; and (iii) is not
59 the subject of any pending disciplinary action by a medical
60 licensing board and has not been the subject of professional
61 discipline by a medical licensing board in any jurisdiction is not
62 required to have a certificate from the Educational Commission
63 for Foreign Medical Graduates;

64 (3) He or she must submit evidence to the board of either: (i)
65 Having successfully completed a minimum of two years of
66 graduate clinical training in a program approved by the
67 Accreditation Council for Graduate Medical Education; or (ii)
68 current certification by a member board of the American Board
69 of Medical Specialties.

70 (d) For an individual to be licensed to practice podiatry in
71 this state, he or she must meet the following requirements:

72 (1) He or she shall submit an application to the board on a
73 form provided by the board and remit to the board a reasonable
74 fee, the amount of the reasonable fee to be set by the board. The

75 application must, as a minimum, require a sworn and notarized
76 statement that the applicant is of good moral character and that
77 he or she is physically and mentally capable of engaging in the
78 practice of podiatric medicine;

79 (2) He or she must provide evidence of graduation and
80 receipt of the degree of doctor of podiatric medicine or its
81 equivalent from a school of podiatric medicine which is
82 approved by the Council of Podiatry Education or by the board;

83 (3) He or she must pass an examination approved by the
84 board, which examination can be related to a national standard.
85 The examination shall be in the English language and be
86 designed to ascertain an applicant's fitness to practice podiatric
87 medicine. The board shall before the date of examination
88 determine what will constitute a passing score: *Provided*, That
89 an applicant is required to attain a passing score on all
90 components or steps of the examination within a period of ten
91 consecutive years; and

92 (4) He or she must submit evidence to the board of having
93 successfully completed a minimum of one year of graduate
94 clinical training in a program approved by the Council on
95 Podiatric Medical Education or the Colleges of Podiatric
96 Medicine. The board may consider a minimum of two years of
97 graduate podiatric clinical training in the U. S. armed forces or
98 three years' private podiatric clinical experience in lieu of this
99 requirement.

100 (e) Notwithstanding any of the provisions of this article, the
101 board may issue a restricted license to an applicant in
102 extraordinary circumstances under the following conditions:

103 (1) Upon a finding by the board that based on the applicant's
104 exceptional education, training and practice credentials, the
105 applicant's practice in the state would be beneficial to the public
106 welfare;

107 (2) Upon a finding by the board that the applicant's
108 education, training and practice credentials are substantially
109 equivalent to the requirements of licensure established in this
110 article;

111 (3) Upon a finding by the board that the applicant received
112 his or her post-graduate medical training outside of the United
113 States and its territories;

114 (4) That the restricted license issued under extraordinary
115 circumstances is approved by a vote of three fourths of the
116 members of the board;

117 (5) That orders denying applications for a restricted license
118 under this subsection are not appealable; and

119 (6) That the board report to the President of the Senate and
120 the Speaker of the House of Delegates all decisions made
121 pursuant to this subsection and the reasons for those decisions.

122 (f) The board shall propose rules for legislative approval in
123 accordance with the provisions of article three, chapter
124 twenty-nine-a of this code, that establish and regulate the
125 restricted license issued to an applicant in extraordinary
126 circumstances pursuant to the provisions of this section.

127 (g) Personal interviews by board members of all applicants
128 are not required. An applicant for a license may be required by
129 the board, in its discretion, to appear for a personal interview and
130 may be required to produce original documents for review by the
131 board.

132 (h) All licenses to practice medicine and surgery granted
133 prior to July 1, 2008, and valid on that date shall continue in full
134 effect for the term and under the conditions provided by law at
135 the time of the granting of the license: *Provided*, That the
136 provisions of subsection (d) of this section do not apply to any
137 person legally entitled to practice chiropody or podiatry in this
138 state prior to June 11, 1965: *Provided, however*, That all persons
139 licensed to practice chiropody prior to June 11, 1965, shall be

140 permitted to use the term “chiroprody-podiatry” and shall have
141 the rights, privileges and responsibilities of a podiatrist set out in
142 this article.

143 (i) The board may not issue a license to a person not
144 previously licensed in West Virginia whose license has been
145 revoked or suspended in another state until reinstatement of his
146 or her license in that state.

CHAPTER 150

(Com. Sub. for S. B. 580 - By Senator Stollings)

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 3, 2013.]

AN ACT to repeal §30-4-8a, §30-4-10a, §30-4-25, §30-4-26, §30-4-27, §30-4-28 and §30-4-29 of the Code of West Virginia, 1931, as amended; to repeal §30-4A-6a, §30-4A-6b, §30-4A-6c, §30-4A-6d and §30-4A-18 of said code; to repeal §30-4B-5, §30-4B-6, §30-4B-7 and §30-4B-8 of said code; to amend and reenact §30-4-1, §30-4-2, §30-4-3, §30-4-4, §30-4-5, §30-4-6, §30-4-7, §30-4-8, §30-4-9, §30-4-10, §30-4-11, §30-4-12, §30-4-13, §30-4-14, §30-4-15, §30-4-16, §30-4-17, §30-4-18, §30-4-19, §30-4-20, §30-4-21, §30-4-22, §30-4-23 and §30-4-24 of said code; to amend and reenact §30-4A-1, §30-4A-2, §30-4A-3, §30-4A-4, §30-4A-5, §30-4A-6, §30-4A-7, §30-4A-8, §30-4A-9, §30-4A-10, §30-4A-11, §30-4A-12, §30-4A-13, §30-4A-14, §30-4A-15, §30-4A-16 and §30-4A-17 of said code; and to amend and reenact §30-4B-1, §30-4B-2, §30-4B-3 and §30-4B-4 of said code, all relating to the practice of dentistry; prohibiting the practice of dentistry without a license; providing other applicable sections; providing definitions; providing for board composition; setting forth the powers and duties of the board; clarifying

rule-making authority; continuing a special revenue account; establishing license, certification and permit requirements; continuing a scope of practice; creating temporary permits; establishing renewal requirements; providing for exemptions from licensure; providing requirements for the display of a board authorization; permitting the board to file an injunction; setting forth grounds for disciplinary actions; allowing for specific disciplinary actions; providing procedures for investigation of complaints; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal penalties; updating the requirements concerning the use of anesthesia; updating the requirements of dental laboratory services and updating references.

Be it enacted by the Legislature of West Virginia:

That §30-4-8a, §30-4-10a, §30-4-25, §30-4-26, §30-4-27, §30-4-28 and §30-4-29 of the Code of West Virginia, 1931, as amended, be repealed; that §30-4A-6a, §30-4A-6b, §30-4A-6c, §30-4A-6d and §30-4A-18 of said code be repealed; that §30-4B-5, §30-4B-6, §30-4B-7 and §30-4B-8 of said code be repealed; that §30-4-1, §30-4-2, §30-4-3, §30-4-4, §30-4-5, §30-4-6, §30-4-7, §30-4-8, §30-4-9, §30-4-10, §30-4-11, §30-4-12, §30-4-13, §30-4-14, §30-4-15, §30-4-16, §30-4-17, §30-4-18, §30-4-19, §30-4-20, §30-4-21, §30-4-22, §30-4-23 and §30-4-24 of said code be amended and reenacted; that §30-4A-1, §30-4A-2, §30-4A-3, §30-4A-4, §30-4A-5, §30-4A-6, §30-4A-7, §30-4A-8, §30-4A-9, §30-4A-10, §30-4A-11, §30-4A-12, §30-4A-13, §30-4A-14, §30-4A-15, §30-4A-16 and §30-4A-17 of said code be amended and reenacted; and that §30-4B-1, §30-4B-2, §30-4B-3 and §30-4B-4 of said code be amended and reenacted; all to read as follows:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-1. Unlawful acts.

- 1 (a) It is unlawful for any person to practice or offer to
- 2 practice dentistry or dental hygiene in this state without a
- 3 license, issued under the provisions of this article, or advertise

4 or use any title or description tending to convey or give the
5 impression that they are a dentist or dental hygienist, unless the
6 person is licensed under the provisions of this article.

7 (b) A business entity may not render any service or engage
8 in any activity which, if rendered or engaged in by an individual,
9 would constitute the practice of dentistry, except through a
10 licensee.

§30-4-2. Applicable law.

1 The practices authorized under the provisions of this article
2 and the Board of Dentistry are subject to article one of this
3 chapter, the provisions of this article and any rules promulgated
4 hereunder.

§30-4-3. Definitions.

1 As used in articles four, four-a and four-b, the following
2 words and terms have the following meanings:

3 (1) "AAOMS" means the American Association of Oral and
4 Maxillofacial Surgeons;

5 (2) "AAPD" means the American Academy of Pediatric
6 Dentistry;

7 (3) "ACLS" means Advanced Cardiac Life Support;

8 (4) "ADA" means the American Dental Association;

9 (5) "AMA" means the American Medical Association;

10 (6) "ASA" means American Society of Anesthesiologists;

11 (7) "Anxiolysis/minimal sedation" means removing,
12 eliminating or decreasing anxiety by the use of a single anxiety
13 or analgesia medication that is administered in an amount
14 consistent with the manufacturer's current recommended dosage
15 for the unsupervised treatment of anxiety, insomnia or pain, in
16 conjunction with nitrous oxide and oxygen. This does not
17 include multiple dosing or exceeding current normal dosage

18 limits set by the manufacturer for unsupervised use by the
19 patient at home for the treatment of anxiety;

20 (8) “Approved dental hygiene program” means a program
21 that is approved by the board and is accredited or its educational
22 standards are deemed by the board to be substantially equivalent
23 to those required by the Commission on Dental Accreditation of
24 the American Dental Association;

25 (9) “Approved dental school, college or dental department
26 of a university” means a dental school, college or dental
27 department of a university that is approved by the board and is
28 accredited or its educational standards are deemed by the board
29 to be substantially equivalent to those required by the
30 Commission on Dental Accreditation of the American Dental
31 Association;

32 (10) “Authorize” means that the dentist is giving permission
33 or approval to dental auxiliary personnel to perform delegated
34 procedures in accordance with the dentist’s diagnosis and
35 treatment plan;

36 (11) “BLS” means Basic Life Support;

37 (12) “Board” means the West Virginia Board of Dentistry;

38 (13) “Business entity” means any firm, partnership,
39 association, company, corporation, limited partnership, limited
40 liability company or other entity;

41 (14) “Central Nervous System Anesthesia” means an
42 induced, controlled state of unconsciousness or depressed
43 consciousness produced by a pharmacologic method;

44 (15) “Certificate of qualification” means a certificate
45 authorizing a dentist to practice a specialty;

46 (16) “CPR” means Cardiopulmonary Resuscitation;

47 (17) “Conscious sedation/Moderate sedation” means an
48 induced, controlled state of depressed consciousness, produced

49 through the administration of nitrous oxide and oxygen and/or
50 the administration of other agents whether enteral or parenteral,
51 in which the patient retains the ability to independently and
52 continuously maintain an airway and to respond purposefully to
53 physical stimulation and to verbal command;

54 (18) "CRNA" means Certified Registered Nurse Anesthetist;

55 (19) "Defibrillator" means a device used to sustain asthmatic
56 heartbeat in an emergency and includes an automatic electronic
57 defibrillator (AED);

58 (20) "Delegated procedures" means those procedures
59 specified by law or by rule of the board and performed by dental
60 auxiliary personnel under the supervision of a licensed dentist;

61 (21) "Dentist Anesthesiologist" means a dentist who is
62 trained in the practice of anesthesiology and has completed an
63 additional approved anesthesia education course;

64 (22) "Dental assistant" means a person qualified by
65 education, training or experience who aids or assists a dentist in
66 the delivery of patient care in accordance with delegated
67 procedures as specified by the board by rule or who may perform
68 nonclinical duties in the dental office;

69 (23) "Dental auxiliary personnel" or "auxiliary" means
70 dental hygienists and dental assistants who assist the dentist in
71 the practice of dentistry;

72 (24) "Dental Hygiene" means the performance of
73 educational, preventive or therapeutic dental services and as
74 further provided in section eleven and legislative rule;

75 (25) "Dental hygienist" means a person licensed by the
76 board to practice and who provides dental hygiene and other
77 services as specified by the board by rule to patients in the dental
78 office and in a public health setting;

79 (26) "Dental laboratory" means a business performing dental
80 laboratory services;

81 (27) "Dental laboratory services" means the fabricating,
82 repairing or altering of a dental prosthesis;

83 (28) "Dental laboratory technician" means a person qualified
84 by education, training or experience who has completed a dental
85 laboratory technology education program and who fabricates,
86 repairs or alters a dental prosthesis in accordance with a dentist's
87 work authorization;

88 (29) "Dental office" means the place where the licensed
89 dentist and dental auxiliary personnel are practicing dentistry;

90 (30) "Dental prosthesis" means an artificial appliance
91 fabricated to replace one or more teeth or other oral or peri-oral
92 structure in order to restore or alter function or aesthetics;

93 (31) "Dentist" means an individual licensed by the board to
94 practice dentistry;

95 (32) "Dentistry" means the evaluation, diagnosis, prevention
96 and treatment of diseases, disorders and conditions of the oral
97 cavity, maxillofacial area and the adjacent and associated
98 structures provided by a dentist;

99 (33) "Direct supervision" means supervision of dental
100 auxiliary personnel provided by a licensed dentist who is
101 physically present in the dental office or treatment facility when
102 procedures are being performed;

103 (34) "Facility Permit" means a permit for a facility where
104 sedation procedures are used that correspond with the level of
105 anesthesia provided;

106 (35) "General anesthesia" means an induced, controlled state
107 of unconsciousness in which the patient experiences complete
108 loss of protective reflexes, as evidenced by the inability to
109 independently maintain an airway, the inability to respond
110 purposefully to physical stimulation or the inability to respond
111 purposefully to verbal command.

112 (36) “Deep conscious sedation/general anesthesia” includes
113 partial loss of protective reflexes and the patient retains the
114 ability to independently and continuously maintain an airway;

115 (37) “General supervision” means a dentist is not required to
116 be in the office or treatment facility when procedures are being
117 performed by the auxiliary dental personnel, but has personally
118 diagnosed the condition to be treated, has personally authorized
119 the procedures and will evaluate the treatment provided by the
120 dental auxiliary personnel;

121 (38) “Good moral character” means a lack of history of
122 dishonesty;

123 (39) “Health Care Provider BLS/CPR” means Health Care
124 Provider Basic Life Support/Cardiopulmonary Resuscitation;

125 (40) “License” means a license to practice dentistry or dental
126 hygiene;

127 (41) “Licensee” means a person holding a license;

128 (42) “Mobile Dental Facility” any self-contained facility in
129 which dentistry or dental hygiene will be practiced which may
130 be moved, towed or transported from one location to another;

131 (43) “Portable dental unit” means any nonfacility in which
132 dental equipment, utilized in the practice of dentistry, is
133 transported to and utilized on a temporary basis an out-of-office
134 location, including but not limited to, patients’ homes, schools,
135 nursing homes or other institutions;

136 (44) “Other dental practitioner” means those persons
137 excluded from the definition of the practice of dentistry under
138 the provisions of subdivisions (3), (4) and (5), section twenty-
139 four, article four of this chapter and also those persons who hold
140 teaching permits which have been issued to them under the
141 provisions of section fourteen, article four of this chapter;

142 (45) "PALS" means Pediatric Advanced Life Support;

143 (46) "Pediatric patient" means infants and children;

144 (47) "Physician anesthesiologist" means a physician,
145 medical doctor or doctor of osteopathy, who is specialized in the
146 practice of anesthesiology;

147 (48) "Public health practice" means treatment or procedures
148 in a public health setting which shall be designated by a rule
149 promulgated by the board to require direct, general or no
150 supervision of a dental hygienist by a dentist;

151 (49) "Public health setting" means hospitals, schools,
152 correctional facilities, jails, community clinics, long-term care
153 facilities, nursing homes, home health agencies, group homes,
154 state institutions under the West Virginia Department of Health
155 and Human Resources, public health facilities, homebound
156 settings, accredited dental hygiene education programs and any
157 other place designated by the board by rule;

158 (50) "Qualified monitor" means an individual who by virtue
159 of credentialing and/or training is qualified to check closely and
160 document the status of a patient undergoing anesthesia and
161 observe utilized equipment;

162 (51) "Relative analgesia /minimal sedation" means an
163 induced, controlled state of minimally depressed consciousness,
164 produced solely by the inhalation of a combination of nitrous
165 oxide and oxygen or single oral premedication without the
166 addition of nitrous oxide and oxygen in which the patient retains
167 the ability to independently and continuously maintain an airway
168 and to respond purposefully to physical stimulation and to verbal
169 command.

170 (52) "Specialty" means the practice of a certain branch of
171 dentistry;

172 (53) "Subcommittee" means West Virginia Board of
173 Dentistry Subcommittee on Anesthesia; and

174 (54) "Work authorization" means a written order for dental
175 laboratory services which has been issued by a licensed dentist
176 or other dental practitioner.

§30-4-4. Board of Dental Examiners.

1 (a) The West Virginia Board of Dental Examiners is
2 continued and on July 1, 2013, the board shall be renamed the
3 West Virginia Board of Dentistry. The members of the board in
4 office on the date this section takes effect shall, unless sooner
5 removed, continue to serve until their respective terms expire
6 and until their successors have been appointed and qualified.

7 (b) The Governor, by and with the advice and consent of the
8 Senate, shall appoint:

9 (1) Six licensed dentists;

10 (2) One licensed dental hygienist;

11 (3) One nationally certified dental assistant or currently
12 practicing dental assistant with a minimum of ten years
13 experience; and

14 (4) One citizen member who is not licensed under the
15 provisions of this article and does not perform any services
16 related to the practice of dentistry.

17 (c) The West Virginia Dental Association may submit
18 recommendations to the Governor for the appointment of the
19 licensed dentists board members, the West Virginia Association
20 of Dental Hygienists may submit recommendations to the
21 Governor for the appointment of a Dental Hygienist board
22 member and the West Virginia Dental Assistant Association may
23 submit recommendations to the Governor for the appointment of
24 a dental assistant board member.

25 (d) A person connected with a commercial entity that may
26 derive financial gain from the profession of dentistry and a

27 person employed as full-time faculty with a dental college,
28 school or dental department of a university are not eligible for
29 appointment to the board.

30 (e) After the initial appointment term, the appointment term
31 is five years. A member may not serve more than two
32 consecutive terms. A member who has served two consecutive
33 full terms may not be reappointed for at least one year after
34 completion of his or her second full term. A member may
35 continue to serve until his or her successor has been appointed
36 and qualified.

37 (f) Each licensed member of the board, at the time of his or
38 her appointment, shall have held a license in this state for a
39 period of not less than five years immediately preceding the
40 appointment.

41 (g) Each member of the board shall be a resident of this state
42 during the appointment term.

43 (h) A vacancy on the board shall be filled by appointment by
44 the Governor for the unexpired term of the member whose office
45 is vacant.

46 (i) The Governor may remove any member from the board
47 for neglect of duty, incompetency or official misconduct.

48 (j) A licensed member of the board immediately and
49 automatically forfeits membership to the board if his or her
50 license to practice is suspended or revoked in any jurisdiction.

51 (k) A member of the board immediately and automatically
52 forfeits membership to the board if he or she is convicted of a
53 felony under the laws of any jurisdiction or becomes a
54 nonresident of this state.

55 (l) The board shall elect annually one of its members as
56 president and one member as secretary who shall serve at the
57 will and pleasure of the board.

58 (m) Each member of the board is entitled to receive
59 compensation and expense reimbursement in accordance with
60 article one of this chapter.

61 (n) A simple majority of the membership serving on the
62 board at a given time is a quorum for the transaction of business.

63 (o) The board shall hold at least two meetings annually.
64 Other meetings shall be held at the call of the president or upon
65 the written request of four members, at the time and place as
66 designated in the call or request.

67 (p) Prior to commencing his or her duties as a member of the
68 board, each member shall take and subscribe to the oath required
69 by section five, article four of the Constitution of this state.

70 (q) The members of the board, when acting in good faith and
71 without malice, shall enjoy immunity from individual civil
72 liability while acting within the scope of their duties as board
73 members.

§30-4-5. Powers of the board.

1 The board has all the powers and duties set forth in this
2 article, by rule, in article one of this chapter and elsewhere in
3 law, including:

4 (1) Hold meetings;

5 (2) Establish procedures for submitting, approving and
6 rejecting applications for a license, certificate and permit;

7 (3) Determine the qualifications of any applicant for a
8 license, certificate and permit;

9 (4) Establish the fees charged under the provisions of this
10 article;

11 (5) Issue, renew, deny, suspend, revoke or reinstate a license,
12 certificate and permit;

13 (6) Prepare, conduct, administer and grade written, oral or
14 written and oral examinations for a license;

15 (7) Contract with third parties to administer the examinations
16 required under the provisions of this article;

17 (8) Maintain records of the examinations the board or a third
18 party administers, including the number of persons taking the
19 examination and the pass and fail rate;

20 (9) Maintain an office and hire, discharge, establish the job
21 requirements and fix the compensation of employees and
22 contract with persons necessary to enforce the provisions of this
23 article.

24 (10) Employ investigators, attorneys, hearing examiners,
25 consultants and other employees as may be necessary who are
26 exempt from the classified service and who serve at the will and
27 pleasure of the board.

28 (11) Investigate alleged violations of the provisions of this
29 article and articles four-a and four-b of this chapter and
30 legislative rules, orders and final decisions of the board;

31 (12) Conduct disciplinary hearings of persons regulated by
32 the board;

33 (13) Determine disciplinary action and issue orders;

34 (14) Institute appropriate legal action for the enforcement of
35 the provisions of this article;

36 (15) Maintain an accurate registry of names and addresses of
37 all persons regulated by the board;

38 (16) Keep accurate and complete records of its proceedings,
39 and certify the same as may be necessary and appropriate;

40 (17) Propose rules in accordance with the provisions of
41 article three, chapter twenty-nine-a of this code to implement the
42 provisions of this article;

43 (18) Sue and be sued in its official name as an agency of this
44 state; and

45 (19) Confer with the Attorney General or his or her assistant
46 in connection with legal matters and questions.

§30-4-6. Rule-making authority.

1 (a) The board shall propose rules for legislative approval, in
2 accordance with the provisions of article three, chapter
3 twenty-nine-a of this code to implement the provisions of this
4 article and articles four-a and four-b of this chapter including:

5 (1) Standards and requirements for licenses, certifications
6 and permits;

7 (2) Requirements for third parties to prepare and/or
8 administer examinations and reexaminations;

9 (3) Educational and experience requirements;

10 (4) Continuing education requirements and approval of
11 continuing education courses;

12 (5) Procedures for the issuance and renewal of licenses,
13 certifications and permits;

14 (6) Establish a fee schedule;

15 (7) Regulate dental specialties;

16 (8) Delegate procedures to be performed by a dental
17 hygienist;

18 (9) Delegate procedures to be performed by a dental
19 assistant;

20 (10) Designate the services and procedures performed under
21 direct supervision, general supervision in public health practice;

22 (11) Designate additional public health settings;

- 23 (12) Regulate the use of firm or trade names;
- 24 (13) Regulate dental corporations;
- 25 (14) Regulate mobile dental facilities;
- 26 (15) Regulate portable dental units;
- 27 (16) Regulate professional limited liability companies;
- 28 (17) Establish professional conduct requirements;
- 29 (18) Establish the procedures for denying, suspending,
30 revoking, reinstating or limiting the practice of licensees,
31 certifications and permittees;
- 32 (19) Establish requirements for inactive or revoked licenses,
33 certifications and permits;
- 34 (20) Regulate dental anesthesia, including:
- 35 (A) Fees;
- 36 (B) Evaluations;
- 37 (C) Equipment;
- 38 (D) Emergency drugs;
- 39 (E) Definitions;
- 40 (F) Qualified monitor requirements; and
- 41 (G) Education;
- 42 (21) Any other rules necessary to implement this article.
- 43 (b) All of the board's rules in effect and not in conflict with
44 these provisions shall remain in effect until they are amended or
45 rescinded.

§30-4-7. Fees; special revenue account; administrative fines.

- 1 (a) All fees and other moneys, except administrative fines,
2 received by the board shall be deposited in a separate special

3 revenue fund in the State Treasury designated the Board of
4 Dentists and Dental Hygienist Special Fund, which is continued
5 and shall be known as the Board of Dentistry Special Fund. The
6 fund is used by the board for the administration of this article.
7 Except as may be provided in article one of this chapter, the
8 board retains the amount in the special revenue account from
9 year to year. No compensation or expense incurred under this
10 article is a charge against the General Revenue Fund.

11 (b) Any amounts received as administrative fines imposed
12 pursuant to this article shall be deposited into the general
13 revenue fund of the State Treasury.

§30-4-8. License to practice dentistry.

1 (a) The board shall issue a license to practice dentistry to an
2 applicant who meets the following requirements:

3 (1) Is at least eighteen years of age;

4 (2) Is of good moral character;

5 (3) Is a graduate of and has a diploma from a school
6 accredited by the Commission on Dental Accreditation or
7 equivalently approved dental college, school or dental
8 department of a university as determined by the board;

9 (4) Has passed the National Board examination as given by
10 the Joint Commission on National Dental Examinations and a
11 clinical examination as specified by the board by rule;

12 (5) Has not been found guilty of cheating, deception or fraud
13 in the examination or any part of the application;

14 (6) Has paid the application fee specified by rule; and

15 (7) Not be an alcohol or drug abuser, as these terms are
16 defined in section eleven, article one-a, chapter twenty-seven of

17 this code: *Provided*, That an applicant in an active recovery
18 process, which may, in the discretion of the board, be evidenced
19 by participation in a twelve-step program or other similar group
20 or process, may be considered.

21 (b) A dentist may not represent to the public that he or she
22 is a specialist in any branch of dentistry or limit his or her
23 practice to any branch of dentistry unless first issued a certificate
24 of qualification in that branch of dentistry by the board.

25 (c) A license to practice dentistry issued by the board shall
26 for all purposes be considered a license issued under this section:
27 *Provided*, That a person holding a license shall renew the
28 license.

§30-4-9. Scope of practice of a dentist.

1 The practice of dentistry includes the following:

2 (1) Coordinate dental services to meet the oral health needs
3 of the patient;

4 (2) Examine, evaluate and diagnose diseases, disorders and
5 conditions of the oral cavity, maxillofacial area and adjacent and
6 associated structures;

7 (3) Treat diseases, disorders and conditions of the oral
8 cavity, maxillofacial area and the adjacent and associated
9 structures;

10 (4) Provide services to prevent diseases, disorders and
11 conditions of the oral cavity, maxillofacial area and the adjacent
12 and associated structures;

13 (5) Fabricate, repair or alter a dental prosthesis;

14 (6) Administer anesthesia in accordance with the provisions
15 of article four-a of this chapter;

16 (7) Prescribe drugs necessary for the practice of dentistry;

- 17 (8) Execute and sign a death certificate when it is required
18 in the practice of dentistry;
- 19 (9) Employ and supervise dental auxiliary personnel;
- 20 (10) Authorize delegated procedures to be performed by
21 dental auxiliary personnel; and
- 22 (11) Perform any other work included in the curriculum of
23 an approved dental school, college or dental department of a
24 university.

§30-4-10. License to practice dental hygiene.

- 1 (a) The board shall issue a dental hygienist license to an
2 applicant who meets the following requirements:
- 3 (1) Is at least eighteen years of age;
- 4 (2) Is of good moral character;
- 5 (3) Is a graduate with a degree in dental hygiene from an
6 approved dental hygiene program of a college, school or dental
7 department of a university;
- 8 (4) Has passed the national board dental hygiene
9 examination, a regional or state clinical examination and a state
10 law examination that tests the applicant's knowledge of subjects
11 specified by the board by rule;
- 12 (5) Has not been found guilty of cheating, deception or fraud
13 in the examination or any part of the application;
- 14 (6) Has paid the application fee specified by rule; and,
- 15 (7) Not be an alcohol or drug abuser, as these terms are
16 defined in section eleven, article one-a, chapter twenty-seven of
17 this code: *Provided*, That an applicant in an active recovery
18 process, which may, in the discretion of the board, be evidenced
19 by participation in a twelve-step program or other similar group
20 or process, may be considered.

21 (b) A dental hygienist license issued by the board and in
22 good standing on the effective date of the amendments to this
23 section shall for all purposes be considered a dental hygienist
24 license issued under this section: *Provided*, That a person
25 holding a dental hygienist license shall renew the license.

§30-4-11. Scope of practice for a dental hygienist.

1 The practice of dental hygiene includes the following:

2 (1) Perform a complete prophylaxis, including the removal
3 of any deposit, accretion or stain from supra and subgingival, the
4 surface of a tooth or a restoration;

5 (2) Apply a medicinal agent to a tooth for a prophylactic
6 purpose;

7 (3) Take a radiograph for interpretation by a dentist;

8 (4) Instruct a patient on proper oral hygiene practice;

9 (5) Place sealants on a patient's teeth without a prior
10 examination by a licensed dentist: *Provided*, That for this
11 subdivision, the dental hygienist has a public health practice
12 permit issued by the board, and subject to a collaborative
13 agreement with a supervising dentist and the patient is referred
14 for a dental examination within six months of sealant
15 application;

16 (6) Perform all delegated procedures of a dental hygienist
17 specified by rule by the board; and

18 (7) Performing all delegated procedures of a dental assistant
19 specified by rule by the board.

§30-4-12. License renewal.

1 (a) All persons regulated by this article shall annually or
2 biannually, renew his or her board authorization by completing

3 a form prescribed by the board and submitting any other
4 information required by the board.

5 (b) The board shall charge a fee for each renewal of a board
6 authorization and shall charge a late fee for any renewal not paid
7 by the due date.

8 (c) The board shall require as a condition of renewal that
9 each licensee, certificate holder or permittee complete
10 continuing education.

11 (d) The board may deny an application for renewal for any
12 reason which would justify the denial of an original application.

§30-4-13. Board authorizations shall be displayed.

1 (a) The board shall prescribe the form for a board
2 authorization, and may issue a duplicate upon payment of a fee.

3 (b) Any person regulated by the article shall conspicuously
4 display his or her board authorization at his or her principal
5 business location.

§30-4-14. Dental intern, resident, or teaching permit.

1 (a) The board may issue a dental intern or dental resident
2 permit to an applicant who has been accepted as a dental intern
3 or dental resident by a licensed hospital or dental school in this
4 state which maintains an established dental department under the
5 supervision of a licensed dentist and meets the following
6 qualifications:

7 (1) Has graduated from a Commission on Dental
8 Accreditation or equivalent approved dental college, school or
9 dental department of a university with a degree in dentistry;

10 (2) Has paid the application fee specified by rule; and

11 (3) Meets the other qualifications specified by rule.

12 (b) The dental intern or dental resident permit may be
13 renewed and expires on the earlier of:

14 (1) The date the permit holder ceases to be a dental intern or
15 dental resident; or

16 (2) One year after the date of issue.

17 (c) The board may issue a teaching permit to an applicant
18 who is not otherwise licensed to practice dentistry in this state
19 and who meets the following conditions:

20 (1) Is authorized or is eligible, as determined by the board,
21 for a authorization to practice dentistry in another jurisdiction;

22 (2) Has met or been approved under the credentialing
23 standards of a dental school or an academic medical center with
24 which the person is to be affiliated: *Provided*, That the dental
25 school or academic medical center is accredited by the
26 Commission on Dental Accreditation or Joint Commission on
27 Accreditation of Health Care Organizations;

28 (3) The permittee may teach and practice dentistry in or on
29 behalf of a dental school or college offering a doctoral degree in
30 dentistry operated and conducted in this state, in connection with
31 an academic medical center or at any teaching hospital adjacent
32 to a dental school or an academic medical center;

33 (4) Shall successfully complete the West Virginia Dental
34 Law Examination;

35 (5) Shall pay annual renewal fees to the board;

36 (6) Shall comply with continuing education requirements;
37 and

38 (7) Has had no disciplinary actions taken or pending against
39 him or her by any other jurisdiction.

40 (d) A teaching permit may be renewed annually with a
41 written recommendation from the dental school dean.

42 (e) While in effect, a permittee is subject to the restrictions
43 and requirements imposed by this article to the same extent as a
44 licensee. In addition, a permittee may not receive any fee for
45 service other than a salary paid by the hospital or dental school.

**§30-4-15. Special volunteer dentist or dental hygienist license; civil
immunity for voluntary services rendered to
indigents.**

1 (a) There is continued a special volunteer dentist and dental
2 hygienist license for dentist and dental hygienists retired or
3 retiring from the active practice of dentistry and dental hygiene
4 who wish to donate their expertise for the care and treatment of
5 indigent and needy patients in the clinic setting of clinics
6 organized, in whole or in part, for the delivery of health care
7 services without charge. The special volunteer dentist or dental
8 hygienist license shall be issued by the board to dentist or dental
9 hygienists licensed or otherwise eligible for licensure under this
10 article and the legislative rules promulgated hereunder without
11 the payment of an application fee, license fee or renewal fee,
12 shall be issued for the remainder of the licensing period and
13 renewed consistent with the boards other licensing requirements.
14 The board shall develop application forms for the special license
15 provided in this subsection which shall contain the dental
16 hygienist's acknowledgment that:

17 (1) The dentist or dental hygienist's practice under the
18 special volunteer dentist or dental hygienist license will be
19 exclusively devoted to providing dentistry or dental hygiene care
20 to needy and indigent persons in West Virginia;

21 (2) The dentist or dental hygienist will not receive any
22 payment or compensation, either direct or indirect, or have the
23 expectation of any payment or compensation, for any dentistry
24 or dental hygiene services rendered under the special volunteer
25 dentist or dental hygienist license;

26 (3) The dentist or dental hygienist will supply any supporting
27 documentation that the board may reasonably require; and

28 (4) The dentist or dental hygienist agrees to continue to
29 participate in continuing professional education as required by
30 the board for the special volunteer dentist or dental hygienist.

31 (b) Any dentist or dental hygienist who renders any dentistry
32 or dental hygiene service to indigent and needy patients of a
33 clinic organized, in whole or in part, for the delivery of health
34 care services without charge under a special volunteer dentist or
35 dental hygienist license authorized under subsection (a) of this
36 section without payment or compensation or the expectation or
37 promise of payment or compensation is immune from liability
38 for any civil action arising out of any act or omission resulting
39 from the rendering of the dental hygiene service at the clinic
40 unless the act or omission was the result of the dentist's or dental
41 hygienist's gross negligence or willful misconduct. In order for
42 the immunity under this subsection to apply, there shall be a
43 written agreement between the dentist or dental hygienist and the
44 clinic pursuant to which the dentist or dental hygienist will
45 provide voluntary uncompensated dental hygiene services under
46 the control of the clinic to patients of the clinic before the
47 rendering of any services by the dentist or dental hygienist at the
48 clinic: *Provided*, That any clinic entering into such written
49 agreement is required to maintain liability coverage of not less
50 than one million dollars per occurrence.

51 (c) Notwithstanding the provisions of subsection (b) of this
52 section, a clinic organized, in whole or in part, for the delivery
53 of health care services without charge is not relieved from
54 imputed liability for the negligent acts of a dentist or dental
55 hygienist rendering voluntary dental hygiene services at or for
56 the clinic under a special volunteer dentist or dental hygienist
57 license authorized under subsection (a) of this section.

58 (d) For purposes of this section, "otherwise eligible for
59 licensure" means the satisfaction of all the requirements for

60 licensure as listed in section eight of this article and in the
61 legislative rules promulgated thereunder, except the fee
62 requirements of subdivision (6) of said section and of the
63 legislative rules promulgated by the board relating to fees.

64 (e) Nothing in this section may be construed as requiring the
65 board to issue a special volunteer dentist or dental hygienist
66 license to any dental hygienist whose license is or has been
67 subject to any disciplinary action or to any dentist or dental
68 hygienist who has surrendered a license or caused such license
69 to lapse, expire and become invalid in lieu of having a complaint
70 initiated or other action taken against his or her dentist or dental
71 hygienist license, or who has elected to place a dentist or dental
72 hygienist license in inactive status in lieu of having a complaint
73 initiated or other action taken against his or her license, or who
74 has been denied a dentist or dental hygienist license.

75 (f) Any policy or contract of liability insurance providing
76 coverage for liability sold, issued or delivered in this state to any
77 dentist or dental hygienist covered under the provisions of this
78 article shall be read so as to contain a provision or endorsement
79 whereby the company issuing such policy waives or agrees not
80 to assert as a defense on behalf of the policyholder or any
81 beneficiary thereof, to any claim covered by the terms of such
82 policy within the policy limits, the immunity from liability of the
83 insured by reason of the care and treatment of needy and
84 indigent patients by a dentist or dental hygienist who holds a
85 special volunteer dentist or dental hygienist license.

§30-4-16. Dental corporations.

1 (a) Dental corporations are continued.

2 (b) One or more dentists may organize and become a
3 shareholder or shareholders of a dental corporation domiciled
4 within this state under the terms and conditions and subject to
5 the limitations and restrictions specified by rule.

6 (c) No corporation may practice dentistry, or any of its
7 branches, or hold itself out as being capable of doing so without
8 a certificate of authorization from the board.

9 (d) When the Secretary of State receives a certificate of
10 authorization to act as a dental corporation from the board, he or
11 she shall attach the authorization to the corporation application
12 and, upon compliance with the applicable provisions of chapter
13 thirty-one of this code, the Secretary of State shall issue to the
14 incorporators a certificate of incorporation for the dental
15 corporation.

16 (e) A corporation holding a certificate of authorization shall
17 renew annually, on or before June 30, on a form prescribed by
18 the board and pay an annual fee in an amount specified by rule.

19 (f) A dental corporation may practice dentistry only through
20 an individual dentist or dentists licensed to practice dentistry in
21 this state, but the dentist or dentists may be employees rather
22 than shareholders of the corporation.

23 (g) A dental corporation holding a certificate of
24 authorization shall cease to engage in the practice of dentistry
25 upon being notified by the board that any of its shareholders is
26 no longer a licensed dentist or when any shares of the
27 corporation have been sold or disposed of to a person who is not
28 a licensed dentist: *Provided*, That the personal representative of
29 a deceased shareholder has a period, not to exceed twenty-four
30 months from the date of the shareholder's death, to dispose of
31 the shares; but nothing contained herein may be construed as
32 affecting the existence of the corporation or its right to continue
33 to operate for all lawful purposes other than the practice of
34 dentistry.

§30-4-17. Reinstatement.

1 (a) A licensee against whom disciplinary action has been
2 taken under the provisions of this article shall be afforded an
3 opportunity to demonstrate the qualifications to resume practice.

4 The application for reinstatement shall be in writing and subject
5 to the procedures specified by the board by rule.

6 (b) A licensee who does not complete annual renewal, as
7 specified by the board by rule, and whose license has lapsed for
8 one year or longer, shall make application for reinstatement as
9 specified by the board by rule.

10 (c) The board, at its discretion and for cause, may require an
11 applicant for reinstatement to undergo a physical and/or mental
12 evaluation to determine a licensee is competent to practice or if
13 the licensee is impaired by drugs or alcohol.

§30-4-18. Actions to enjoin violations.

1 (a) If the board obtains information that any person has
2 engaged in, is engaging in or is about to engage in any act which
3 constitutes or will constitute a violation of the provisions of this
4 article, the rules promulgated pursuant to this article or a final
5 order or decision of the board, it may issue a notice to the person
6 to cease and desist in engaging in the act and/or apply to the
7 circuit court in the county of the alleged violation for an order
8 enjoining the act.

9 (b) The circuit court may issue a temporary injunction
10 pending a decision on the merits and may issue a permanent
11 injunction based on its findings in the case.

12 (c) The judgment of the circuit court on an application
13 permitted by the provisions of this section is final unless
14 reversed, vacated or modified on appeal to the West Virginia
15 Supreme Court of Appeals.

§30-4-19. Complaints; investigations; due process procedure; grounds for disciplinary action.

1 (a) The board may initiate a complaint upon receipt of
2 credible information and shall, upon the receipt of a written
3 complaint of any person, cause an investigation to be made to

4 determine whether grounds exist for disciplinary action under
5 this article or the legislative rules promulgated pursuant to this
6 article.

7 (b) After reviewing any information obtained through an
8 investigation, the board shall determine if probable cause exists
9 that the licensee, certificate holder or permittee has violated
10 subsection (g) of this section or rules promulgated pursuant to
11 this article.

12 (c) Upon a finding of probable cause to go forward with a
13 complaint, the board shall provide a copy of the complaint to the
14 licensee, certificate holder or permittee.

15 (d) Upon a finding that probable cause exists that the
16 licensee, certificate holder or permittee has violated subsection
17 (g) of this section or rules promulgated pursuant to this article,
18 the board may enter into a consent decree or hold a hearing for
19 disciplinary action against the licensee, certificate holder or
20 permittee. Any hearing shall be held in accordance with the
21 provisions of this article and shall require a violation to be
22 proven by a preponderance of the evidence.

23 (e) A member of the complaint committee or the executive
24 director of the board may issue subpoenas and subpoenas duces
25 tecum to obtain testimony and documents to aid in the
26 investigation of allegations against any person regulated by the
27 article.

28 (f) Any member of the board or its executive director may
29 sign a consent decree or other legal document on behalf of the
30 board.

31 (g) The board may, after notice and opportunity for hearing,
32 deny or refuse to renew, suspend, restrict or revoke the license,
33 certificate or permit of, or impose probationary conditions upon
34 or take disciplinary action against, any licensee, certificate
35 holder or permittee for any of the following reasons:

- 36 (1) Obtaining a board authorization by fraud,
37 misrepresentation or concealment of material facts;
- 38 (2) Being convicted of a felony or a misdemeanor crime of
39 moral turpitude;
- 40 (3) Being guilty of unprofessional conduct which placed the
41 public at risk, as defined by legislative rule of the board;
- 42 (4) Intentional violation of a lawful order or legislative rule
43 of the board;
- 44 (5) Having had a board authorization revoked or suspended,
45 other disciplinary action taken, or an application for a board
46 authorization denied by the proper authorities of another
47 jurisdiction;
- 48 (6) Aiding or abetting unlicensed practice;
- 49 (7) Engaging in an act while acting in a professional capacity
50 which has endangered or is likely to endanger the health, welfare
51 or safety of the public;
- 52 (8) Having an incapacity that prevents a licensee from
53 engaging in the practice of dentistry or dental hygiene, with
54 reasonable skill, competence and safety to the public;
- 55 (9) Committing fraud in connection with the practice of
56 dentistry or dental hygiene;
- 57 (10) Failing to report to the board one's surrender of a
58 license or authorization to practice dentistry or dental hygiene in
59 another jurisdiction while under disciplinary investigation by any
60 of those authorities or bodies for conduct that would constitute
61 grounds for action as defined in this section;
- 62 (11) Failing to report to the board any adverse judgment,
63 settlement or award arising from a malpractice claim arising
64 related to conduct that would constitute grounds for action as
65 defined in this section;

66 (12) Being guilty of unprofessional conduct as contained in
67 the American Dental Association principles of ethics and code
68 of professional conduct. The following acts are conclusively
69 presumed to be unprofessional conduct:

70 (A) Being guilty of any fraud or deception;

71 (B) Committing a criminal operation or being convicted of
72 a crime involving moral turpitude;

73 (C) Abusing alcohol or drugs;

74 (D) Violating any professional confidence or disclosing any
75 professional secret;

76 (E) Being grossly immoral;

77 (F) Harassing, abusing, intimidating, insulting, degrading or
78 humiliating a patient physically, verbally or through another
79 form of communication;

80 (G) Obtaining any fee by fraud or misrepresentation;

81 (H) Employing directly or indirectly, or directing or
82 permitting any suspended or unlicensed person so employed, to
83 perform operations of any kind or to treat lesions of the human
84 teeth or jaws or correct malimposed formations thereof;

85 (I) Practicing, or offering or undertaking to practice dentistry
86 under any firm name or trade name not approved by the board;

87 (J) Having a professional connection or association with, or
88 lending his or her name to another, for the illegal practice of
89 dentistry, or professional connection or association with any
90 person, firm or corporation holding himself or herself,
91 themselves or itself out in any manner contrary to this article;

92 (K) Making use of any advertising relating to the use of any
93 drug or medicine of unknown formula;

94 (L) Advertising to practice dentistry or perform any
95 operation thereunder without causing pain;

96 (M) Advertising professional superiority or the performance
97 of professional services in a superior manner;

98 (N) Advertising to guarantee any dental service;

99 (O) Advertising in any manner that is false or misleading in
100 any material respect;

101 (P) Soliciting subscriptions from individuals within or
102 without the state for, or advertising or offering to individuals
103 within or without the state, a course or instruction or course
104 materials in any phase, part or branch of dentistry or dental
105 hygiene in any journal, newspaper, magazine or dental
106 publication, or by means of radio, television or United States
107 mail, or in or by any other means of contacting individuals:
108 *Provided*, That the provisions of this paragraph may not be
109 construed so as to prohibit:

110 (i) An individual dentist or dental hygienist from presenting
111 articles pertaining to procedures or technique to state or national
112 journals or accepted dental publications; or

113 (ii) Educational institutions approved by the board from
114 offering courses or instruction or course materials to individual
115 dentists and dental hygienists from within or without the state;
116 or

117 (Q) Engaging in any action or conduct which would have
118 warranted the denial of the license.

119 (13) Knowing or suspecting that a licensee is incapable of
120 engaging in the practice of dentistry or dental hygiene, with
121 reasonable skill, competence and safety to the public, and failing
122 to report any relevant information to the board;

123 (14) Using or disclosing protected health information in an
124 unauthorized or unlawful manner;

125 (15) Engaging in any conduct that subverts or attempts to
126 subvert any licensing examination or the administration of any
127 licensing examination;

128 (16) Failing to furnish to the board or its representatives any
129 information legally requested by the board or failing to cooperate
130 with or engaging in any conduct which obstructs an investigation
131 being conducted by the board;

132 (17) Announcing or otherwise holding himself or herself out
133 to the public as a specialist or as being specially qualified in any
134 particular branch of dentistry or as giving special attention to any
135 branch of dentistry or as limiting his or her practice to any
136 branch of dentistry without first complying with the
137 requirements established by the board for the specialty and
138 having been issued a certificate of qualification in the specialty
139 by the board;

140 (18) Failing to report to the board within seventy-two hours
141 of becoming aware thereof any life threatening occurrence,
142 serious injury or death of a patient resulting from dental
143 treatment or complications following a dental procedure;

144 (19) Failing to report to the board any driving under the
145 influence and/or driving while intoxicated offense; or

146 (20) Violation of any of the terms or conditions of any order
147 entered in any disciplinary action.

148 (h) For the purposes of subsection (g) of this section,
149 effective July 1, 2013, disciplinary action may include:

150 (1) Reprimand;

151 (2) Probation;

152 (3) Restrictions;

153 (4) Suspension;

154 (5) Revocation;

155 (6) Administrative fine, not to exceed \$1,000 per day per
156 violation;

157 (7) Mandatory attendance at continuing education seminars
158 or other training;

159 (8) Practicing under supervision or other restriction; or

160 (9) Requiring the licensee or permittee to report to the board
161 for periodic interviews for a specified period of time.

162 (i) In addition to any other sanction imposed, the board may
163 require a licensee or permittee to pay the costs of the proceeding.

164 (j) A person authorized to practice under this article who
165 reports or otherwise provides evidence of the negligence,
166 impairment or incompetence of another member of this
167 profession to the board or to any peer review organization is not
168 liable to any person for making the report if the report is made
169 without actual malice and in the reasonable belief that the report
170 is warranted by the facts known to him or her at the time.

§30-4-20. Procedures for hearing; right of appeal.

1 (a) Hearings are governed by the provisions of section eight,
2 article one of this chapter.

3 (b) The board may conduct the hearing or elect to have an
4 administrative law judge conduct the hearing.

5 (c) If the hearing is conducted by an administrative law
6 judge, at the conclusion of a hearing he or she shall prepare a
7 proposed written order containing findings of fact and
8 conclusions of law. The proposed order may contain proposed
9 disciplinary actions if the board so directs. The board may
10 accept, reject or modify the decision of the administrative law
11 judge.

12 (d) Any member or the executive director of the board has
13 the authority to administer oaths, examine any person under
14 oath.

15 (e) If, after a hearing, the board determines the licensee or
16 permittee has violated provisions of this article or the board's
17 rules, a formal written decision shall be prepared which contains
18 findings of fact, conclusions of law and a specific description of
19 the disciplinary actions imposed.

§30-4-21. Judicial review.

1 A person adversely affected by a decision of the board
2 denying an application or entered after a hearing may obtain
3 judicial review of the decision in accordance with section four,
4 article five, chapter twenty-nine-a of this code and may appeal
5 any ruling resulting from judicial review in accordance with
6 article six of said chapter.

§30-4-22. Criminal offenses.

1 (a) When, as a result of an investigation under this article or
2 otherwise, the board has reason to believe that a person
3 authorized under this article has committed a criminal offense
4 under this article, the board may bring its information to the
5 attention of an appropriate law-enforcement official.

6 (b) Any person who intentionally practices, or holds himself
7 or herself out as qualified to practice dentistry or dental hygiene,
8 or uses any title, word or abbreviation to indicate to or induce
9 others to believe he or she is licensed to practice as a dentist or
10 dental hygienist without obtaining an active, valid West Virginia
11 license to practice that profession or with a license that is:

12 (1) Expired, suspended or lapsed; or

13 (2) Inactive, revoked, suspended as a result of disciplinary
14 action, or surrendered, is guilty of a misdemeanor and, upon
15 conviction thereof, shall be fined not more than \$10,000.

§30-4-23. Single act evidence of practice.

1 In any action brought under this article, article four-a or
2 article four-b any proceeding initiated under this article,
3 evidence of the commission of a single act prohibited by this
4 article is sufficient to justify a penalty, injunction, restraining
5 order or conviction without evidence of a general course of
6 conduct.

§30-4-24. Inapplicability of article.

1 The provisions of this article do not apply to:

2 (1) A licensed physician or surgeon in the practice of his or
3 her profession when rendering dental relief in emergency cases,
4 unless he or she undertakes to reproduce or reproduces lost parts
5 of the human teeth or to restore or replace lost or missing teeth
6 in the human mouth;

7 (2) A dental laboratory in the performance of dental
8 laboratory services, while the dental laboratory, in the
9 performance of the work, conforms in all respects to the
10 requirements of article four-b of this chapter and further does not
11 apply to persons performing dental laboratory services under the
12 direct supervision of a licensed dentist or under the direct
13 supervision of a person authorized under this article to perform
14 any of the acts in this article defined to constitute the practice of
15 dentistry while the work is performed in connection with, and as
16 a part of, the dental practice of the licensed dentist or other
17 authorized person and for his or her dental patients;

18 (3) A student enrolled in and regularly attending any dental
19 college recognized by the board, provided their acts are done in
20 the dental college and under the direct and personal supervision
21 of their instructor;

22 (4) A student enrolled in and regularly attending any dental
23 college, recognized by the board, practicing dentistry in a public

24 health setting, provided their acts are done under the direct
25 supervision of their instructor, adjunct instructor or a dentist;

26 (5) An authorized dentist of another state temporarily
27 operating a clinic under the auspices of a organized and
28 reputable dental college or reputable dental society, or to one
29 lecturing before a reputable society composed exclusively of
30 dentists; or

31 (6) A dentists whose practice is confined exclusively to the
32 service of the United States Army, the United States Navy, the
33 United States Air Force, The United States Coast Guard, the
34 United States Public Health Service, the United States Veteran's
35 Bureau or any other authorized United States government agency
36 or bureau.

ARTICLE 4A. ADMINISTRATION OF ANESTHESIA BY DENTISTS.

§30-4A-1. Requirement for anesthesia permit; qualifications and requirements for qualified monitors.

1 (a) No dentist may induce central nervous system anesthesia
2 without first having obtained an anesthesia permit for the level
3 of anesthesia being induced.

4 (b) The applicant for an anesthesia permit shall pay the
5 appropriate permit fees and renewal fees, submit a completed
6 board-approved application and consent to an office evaluation.

7 (c) Permits shall be issued to coincide with the annual
8 renewal dates for licensure.

9 (d) Permit holders shall report the names and qualifications
10 of each qualified monitor providing services to that permit
11 holder. A qualified monitor may not perform the functions and
12 responsibilities specified in this article for any level of
13 anesthesia, other than relative analgesia/minimal sedation,
14 without certification by the board. Qualified monitors shall apply

15 for certification and pay the appropriate application fees and
16 renewal fees. Qualified monitors are required to renew annually
17 by the 30th day of June. To be certified as a qualified monitor,
18 the applicant must meet the following minimum qualifications:

19 (1) Possess a current health care provider BLS/CPR
20 certification;

21 (2) For monitoring, conscious sedation/moderate sedation or
22 general anesthesia/deep conscious sedation procedures,
23 successful completion of an AAOMS or AAPD anesthesia
24 assistants certification program; and

25 (3) For monitoring a nitrous oxide unit, successful
26 completion of a board-approved course in nitrous oxide
27 monitoring.

28 (e) A dentist shall hold a class permit equivalent to or
29 exceeding the anesthesia level being provided unless the
30 provider of anesthesia is a physician anesthesiologist or another
31 licensed dentist who holds a current anesthesia permit issued by
32 the board.

§30-4A-2. Presumption of Degree of Central Nervous System Depression.

1 (a) In any hearing where a question exists as to the level of
2 central nervous system depression a licensee has induced, as
3 outlined in this article, the board may base its findings on,
4 among other things, the types, dosages and routes of
5 administration of drugs administered to the patient and what
6 result can reasonably be expected from those drugs in those
7 dosages and routes administered in a patient of that physical and
8 psychological status.

9 (b) No permit holder may have more than one person under
10 conscious sedation/moderate sedation and/or general
11 anesthesia/deep conscious sedation at the same time, exclusive
12 of recovery.

§30-4A-3. Classes of anesthesia permits.

1 (a) The board shall issue the following permits:

2 (1) Class 2 Permit: A Class 2 Permit authorizes a dentist to
3 induce anxiolysis/minimal sedation.

4 (2) Class 3 Permit: A Class 3 Permit authorizes a dentist to
5 induce conscious sedation/moderate sedation as limited enteral
6 (3a) and/or comprehensive parenteral (3b) and
7 anxiolysis/minimal sedation.

8 (3) Class 4 Permit: A Class 4 Permit authorizes a dentist to
9 induce general anesthesia/deep conscious sedation, conscious
10 sedation/moderate sedation and anxiolysis/minimal sedation.

11 (b) When anesthesia services are provided in dental facilities
12 by a medical doctor or doctor of osteopathy physician
13 anesthesiologist or dentist anesthesiologist, the dental facility
14 shall be inspected and approved for a Class 4 permit and the
15 dentist shall have a minimum of a Class 2 permit. If anesthesia
16 services are provided by a CRNA, the dental facility shall be
17 inspected and approved for a Class 4 permit and the supervising
18 dentist shall have the same level of permit for the level of
19 anesthesia provided by the CRNA.

§30-4A-4. Qualifications, standards and continuing education requirements for relative analgesia/minimal sedation use.

1 (a) The board shall allow administration of relative
2 analgesia/minimal sedation if the practitioner:

3 (1) Is a licensed dentist in the state;

4 (2) Holds valid and current documentation showing
5 successful completion of a Health Care Provider BLS/CPR
6 course; and

7 (3) Has completed a training course of instruction in dental
8 school, continuing education or as a postgraduate in the
9 administration of relative analgesia/minimal sedation.

10 (b) A practitioner who administers relative
11 analgesia/minimal sedation shall have the following facilities,
12 equipment and drugs available during the procedure and during
13 recovery:

14 (1) An operating room large enough to adequately
15 accommodate the patient on an operating table or in an operating
16 chair and to allow delivery of age appropriate care in an
17 emergency situation;

18 (2) An operating table or chair which permits the patient to
19 be positioned so that the patient's airway can be maintained,
20 quickly alter the patient's position in an emergency and provide
21 a firm platform for the administration of basic life support;

22 (3) A lighting system which permits evaluation of the
23 patient's skin and mucosa color and a backup lighting system of
24 sufficient intensity to permit completion of any operation
25 underway in the event of a general power failure;

26 (4) Suction equipment which permits aspiration of the oral
27 and pharyngeal cavities;

28 (5) An oxygen delivery system with adequate age
29 appropriate full face masks and appropriate connectors that is
30 capable of delivering high flow oxygen to the patient under
31 positive pressure, together with an adequate backup system;

32 (6) A nitrous oxide delivery system with a fail-safe
33 mechanism that will ensure appropriate continuous oxygen
34 delivery and a scavenger system; and

35 (7) A defibrillator device: *Provided*, That this requirement
36 is only for Class 2, 3 and 4 permittees.

37 (c) All equipment used shall be appropriate for the height
38 and weight and age of the patient.

39 (d) Before inducing relative analgesia/minimal sedation by
40 means of nitrous oxide or a single premedication agent, a
41 practitioner shall:

42 (1) Evaluate the patient;

43 (2) Give instruction to the patient or, when appropriate due
44 to age or psychological status of the patient, the patient's
45 guardian; and

46 (3) Certify that the patient is an appropriate candidate for
47 relative analgesia/minimal sedation.

48 (e) A practitioner who administers relative
49 analgesia/minimal sedation shall see that the patient's condition
50 is visually monitored. At all times, the patient shall be observed
51 by a qualified monitor until discharge criteria have been met.

52 (f) A qualified monitor's record shall include documentation
53 of all medications administered with dosages, time intervals and
54 route of administration including local anesthesia.

55 (g) A discharge entry shall be made in the patient's record
56 indicating the patient's condition upon discharge.

57 (h) A qualified monitor shall hold valid and current
58 documentation:

59 (1) Showing successful completion of a Health Care
60 Provider BLS/CPR course; and

61 (2) Have received training and be competent in the
62 recognition and treatment of medical emergencies, monitoring
63 vital signs, the operation of nitrous oxide delivery systems and
64 the use of the sphygmomanometer and stethoscope.

65 (i) The practitioner shall assess the patient's responsiveness
66 using preoperative values as normal guidelines and discharge the
67 patient only when the following criteria are met:

68 (1) The patient is alert and oriented to person, place and time
69 as appropriate to age and preoperative neurological status;

70 (2) The patient can talk and respond coherently to verbal
71 questioning or to preoperative neurological status;

72 (3) The patient can sit up unaided or without assistance or to
73 preoperative neurological status;

74 (4) The patient can ambulate with minimal assistance or to
75 preoperative neurological status; and

76 (5) The patient does not have uncontrollable nausea,
77 vomiting or dizziness.

§30-4A-5. Qualifications, standards, and continuing education requirements for a Class 2 Permit.

1 (a) The board shall issue a Class 2 Permit to an applicant
2 who:

3 (1) Is a licensed dentist in West Virginia;

4 (2) Holds valid and current documentation showing
5 successful completion of a Health Care Provider BLS/CPR; and

6 (3) Has completed a board approved course of at least six
7 hours didactic and clinical of either predoctoral dental school or
8 postgraduate instruction.

9 (b) A dentist who induces relative analgesia/minimal
10 sedation and anxiolysis/minimal sedation shall have the
11 following facilities, properly maintained equipment and
12 appropriate drugs available during the procedures and during
13 recovery:

14 (1) An operating room large enough to adequately
15 accommodate the patient on an operating table or in an operating
16 chair and to allow an operating team of at least two individuals
17 to freely move about the patient;

18 (2) An operating table or chair which permits the patient to
19 be positioned so the operating team can maintain the patient's
20 airway, quickly alter the patient's position in an emergency and
21 provide a firm platform for the administration of basic life
22 support;

23 (3) A lighting system which permits evaluation of the
24 patient's skin and mucosal color and a backup lighting system of
25 sufficient intensity to permit completion of any operation
26 underway in the event of a general power failure;

27 (4) Suction equipment which permits aspiration of the oral
28 and pharyngeal cavities;

29 (5) An oxygen delivery system with adequate age
30 appropriate full face mask and appropriate connectors that is
31 capable of delivering high flow oxygen to the patient under
32 positive pressure, together with an adequate backup system;

33 (6) A nitrous oxide delivery system with a fail-safe
34 mechanism that will ensure appropriate continuous oxygen
35 delivery and a scavenger system;

36 (7) A recovery area that has available oxygen, adequate
37 lighting, suction and electrical outlets. The recovery area can be
38 the operating room;

39 (8) Sphygmomanometer, stethoscope and pulse oximeter;

40 (9) Emergency drugs as specified by rule;

41 (10) A defibrillator device; and

42 (11) All equipment and medication dosages shall be in
43 accordance with the height and weight and age of the patient
44 being treated.

45 (c) Before inducing anxiolysis/minimal sedation, a dentist
46 shall:

47 (1) Evaluate the patient by using the ASA Patient Physical
48 Status Classification of the ASA that the patient is an appropriate
49 candidate for anxiolysis/minimal sedation; and

50 (2) Obtain written informed consent from the patient or
51 patient's guardian for the anesthesia. The obtaining of the
52 informed consent shall be documented in the patient's record.

53 (d) The dentist shall monitor and record the patient's
54 condition or shall use a qualified monitor to monitor and record
55 the patient's condition. The documented requirements of a
56 qualified monitor monitoring anxiolysis/minimal sedation cases
57 are as specified by rule. A Class 2 Permit holder may have no
58 more than one person under anxiolysis/minimal sedation at the
59 same time.

60 (e) The patient shall be monitored as follows:

61 (1) Patients shall have continuous monitoring using pulse
62 oximetry. The patient's blood pressure, heart rate and respiration
63 shall be recorded at least once before, during and after the
64 procedure and these recordings shall be documented in the
65 patient record. At all times, the patient shall be observed by a
66 qualified monitor until discharge criteria have been met. If the
67 dentist is unable to obtain this information, the reasons shall be
68 documented in the patient's record. The record shall also include
69 documentation of all medications administered with dosages,
70 time intervals and route of administration including local
71 anesthesia.

72 (2) A discharge entry shall be made by the dentist in the
73 patient's record indicating the patient's condition upon
74 discharge.

75 (f) A permit holder who uses anxiolysis/minimal sedation
76 shall see that the patient's condition is visually monitored. The

77 patient shall be monitored as to response to verbal stimulation,
78 oral mucosal color and preoperative and postoperative vital
79 signs.

80 (g) The dentist shall assess the patient's responsiveness
81 using preoperative values as normal guidelines and discharge the
82 patient only when the following criteria are met:

83 (1) Vital signs including blood pressure, pulse rate and
84 respiratory rate are stable;

85 (2) The patient is alert and oriented to person, place and time
86 as appropriate to age and preoperative neurological status;

87 (3) The patient can talk and respond coherently to verbal
88 questioning or to preoperative neurological status;

89 (4) The patient can sit up unaided or to preoperative
90 neurological status;

91 (5) The patient can ambulate with minimal assistance or to
92 preoperative neurological status; and

93 (6) The patient does not have uncontrollable nausea or
94 vomiting and has minimal dizziness.

95 (h) A dentist may not release a patient who has undergone
96 anxiolysis/minimal sedation except to the care of a responsible
97 adult third party.

§30-4A-6. Qualifications, standards, and continuing education requirements for Class 3 Anesthesia Permit.

1 (a) The board shall issue or renew a Class 3 Permit to an
2 applicant who:

3 (1) Is a licensed dentist in West Virginia;

4 (2) Holds valid and current documentation showing
5 successful completion of a Health Care Provider BLS/CPR

6 course, ACLS and/or a PALS course if treating pediatric
7 patients; and

8 (3) Satisfies one of the following criteria:

9 (A) Certificate of completion of a comprehensive training
10 program in conscious sedation that satisfies the requirements
11 described in the ADA Guidelines for Teaching Pain Control and
12 Sedation to Dentists and Dental Students and the ADA
13 Guidelines for the Use of Sedation and General Anesthesia by
14 Dentists at the time training was commenced.

15 (B) Certificate of completion of an ADA-accredited
16 postdoctoral training program which affords comprehensive and
17 appropriate training necessary to administer and manage
18 conscious sedation commensurate with these guidelines.

19 (C) In lieu of these requirements, the board may accept
20 documented evidence of equivalent training or experience in
21 conscious sedation anesthesia for Limited Enteral Permit as
22 Class 3a or comprehensive Parenteral Permit as Class 3b as
23 specified by rule.

24 (b) A dentist who induces conscious sedation shall have the
25 following facilities, properly maintained age appropriate
26 equipment and age appropriate medications available during the
27 procedures and during recovery:

28 (1) An operating room large enough to adequately
29 accommodate the patient on an operating table or in an operating
30 chair and to allow an operating team of at least two individuals
31 to freely move about the patient;

32 (2) An operating table or chair which permits the patient to
33 be positioned so the operating team can maintain the patient's
34 airway, quickly alter the patient's position in an emergency, and
35 provide a firm platform for the administration of basic life
36 support;

37 (3) A lighting system which permits evaluation of the
38 patient's skin and mucosal color and a backup lighting system of
39 sufficient intensity to permit completion of any operation
40 underway in the event of a general power failure;

41 (4) Suction equipment which permits aspiration of the oral
42 and pharyngeal cavities and a backup suction device which will
43 function in the event of a general power failure;

44 (5) An oxygen delivery system with adequate age
45 appropriate full face mask and appropriate connectors that is
46 capable of delivering high flow oxygen to the patient under
47 positive pressure, together with an adequate backup system;

48 (6) A nitrous oxide delivery system with a fail-safe
49 mechanism that will ensure appropriate continuous oxygen
50 delivery and a scavenger system;

51 (7) A recovery area that has available oxygen, adequate
52 lighting, suction and electrical outlets. The recovery area can be
53 the operating room;

54 (8) Sphygmomanometer, pulse oximeter, oral and
55 nasopharyngeal airways, intravenous fluid administration
56 equipment and/or equipment required for the standard of care or
57 as specified by rule;

58 (9) Emergency drugs as specified by rule; and

59 (10) A defibrillator device.

60 (c) Before inducing conscious sedation, a dentist shall:

61 (1) Evaluate the patient and document, using the ASA
62 Patient Physical Status Classifications, that the patient is an
63 appropriate candidate for conscious sedation;

64 (2) Give written preoperative and postoperative instructions
65 to the patient or, when appropriate due to age or neurological
66 status of the patient, the patient's guardian; and

67 (3) Obtain written informed consent from the patient or
68 patient's guardian for the anesthesia.

69 (d) The dentist shall ensure that the patient's condition is
70 monitored and recorded on a contemporaneous record. The
71 dentist shall use a qualified monitor to monitor and record the
72 patient's condition in addition to the chair side dental assistant.
73 A qualified monitor shall be present to monitor the patient at all
74 times.

75 (e) The patient shall be monitored as follows:

76 (1) Patients shall have continuous monitoring using pulse
77 oximetry and/or equipment required for the standard of care or
78 as specified by rule by a qualified monitor until discharge
79 criteria have been met. The documented requirements of a
80 qualified monitor monitoring limited enteral or comprehensive
81 parenteral sedations cases are as specified by rule. The patient's
82 blood pressure, heart rate and respiration shall be recorded every
83 five minutes and these recordings shall be documented in the
84 patient record. The record shall also include documentation of
85 preoperative and postoperative vital signs, all medications
86 administered with dosages, time intervals and route of
87 administration including local anesthesia. If the dentist is unable
88 to obtain this information, the reasons shall be documented in the
89 patient's record.

90 (2) During the recovery phase, the patient shall be monitored
91 by a qualified monitor.

92 (3) A discharge entry shall be made by the dentist in the
93 patient's record indicating the patient's condition upon discharge
94 and the name of the responsible party to whom the patient was
95 discharged.

96 (f) A dentist may not release a patient who has undergone
97 conscious sedation/moderate sedation except to the care of a
98 responsible adult third party.

99 (g) When discharging a pediatric patient the dentist shall
100 follow the current edition of AAPD Guidelines for Monitoring
101 and Management of Pediatric Patients During and After Sedation
102 for Diagnostic and Therapeutic Procedures.

103 (h) The dentist shall assess the patient's responsiveness
104 using preoperative values as normal guidelines and discharge the
105 patient only when the following criteria are met:

106 (1) Vital signs including blood pressure, pulse rate and
107 respiratory rate are stable;

108 (2) The patient is alert and oriented to person, place and time
109 as appropriate to age and preoperative neurological status;

110 (3) The patient can talk and respond coherently to verbal
111 questioning or to preoperative neurological status;

112 (4) The patient can sit up unaided or to preoperative
113 neurological status;

114 (5) The patient can ambulate with minimal assistance or to
115 preoperative neurological status; and

116 (6) The patient does not have uncontrollable nausea or
117 vomiting and has minimal dizziness.

118 (i) A dentist who induces conscious sedation shall employ
119 the services of a qualified monitor and a chair side dental
120 assistant at all times who each shall hold a valid BLS/CPR
121 certification and maintains certification as specified by rule.

§30-4A-7. Qualifications, standards, and continuing education requirements for Class 4 Anesthesia Permit.

1 (a) A Class 4 Permit permits the use of general
2 anesthesia/deep conscious sedation, conscious sedation/moderate
3 sedation and anxiolysis/minimal sedation.

4 (b) The board shall issue or renew a Class 4 Permit to an
5 applicant who:

6 (1) Is a licensed dentist in West Virginia;

7 (2) Holds a valid and current documentation showing
8 successful completion of a Healthcare Provider BLS/CPR
9 course, Advanced Cardiac Life Support (ACLS) and/or Pediatric
10 Advanced Life Support (PALS) course if treating pediatric
11 patients;

12 (3) Satisfies one of the following criteria:

13 (A) Completion of an advanced training program in
14 anesthesia and related subjects beyond the undergraduate dental
15 curriculum that satisfies the requirements described in the ADA
16 Guidelines for Teaching Pain Control and Sedation to Dentists
17 and Dental Students and the ADA Guidelines for the Use of
18 Sedation and General Anesthesia by Dentists at the time training
19 was commenced;

20 (B) Completion of an ADA- or AMA-accredited
21 postdoctoral training program which affords comprehensive and
22 appropriate training necessary to administer and manage general
23 anesthesia, commensurate with these guidelines;

24 (C) In lieu of these requirements, the board may accept
25 documented evidence of equivalent training or experience in
26 general anesthesia/deep conscious sedation.

27 (c) A dentist who induces general anesthesia/deep conscious
28 sedation shall have the following facilities, properly maintained
29 age appropriate equipment and age appropriate drugs available
30 during the procedure and during recovery:

31 (1) An operating room large enough to adequately
32 accommodate the patient on an operating table or in an operating
33 chair and to allow an operating team of at least three individuals
34 to freely move about the patient;

35 (2) An operating table or chair which permits the patient to
36 be positioned so the operating team can maintain the patient's

37 airway, quickly alter the patient's position in an emergency and
38 provide a firm platform for the administration of basic life
39 support;

40 (3) A lighting system which permits evaluation of the
41 patient's skin and mucosal color and a backup lighting system of
42 sufficient intensity to permit completion of any operation
43 underway in the event of a general power failure;

44 (4) Suction equipment which permits aspiration of the oral
45 and pharyngeal cavities and a backup suction device which will
46 function in the event of a general power failure;

47 (5) An oxygen delivery system with adequate age
48 appropriate full face mask and appropriate connectors that is
49 capable of delivering high flow oxygen to the patient under
50 positive pressure, together with an adequate backup system;

51 (6) A nitrous oxide delivery system with a fail-safe
52 mechanism that will insure appropriate continuous oxygen
53 delivery and a scavenger system;

54 (7) A recovery area that has available oxygen, adequate
55 lighting, suction and electrical outlets. The recovery area can be
56 the operating room;

57 (8) Equipment as specified by rule;

58 (9) Emergency drugs as specified by rule;

59 (10) A defibrillator device.

60 (d) Before inducing general anesthesia/deep conscious
61 sedation the dentist shall:

62 (1) Evaluate the patient and document, using the ASA
63 Patient Physical Status Classifications, that the patient is an
64 appropriate candidate for general anesthesia or deep conscious
65 sedation;

66 (2) Shall give written preoperative and postoperative
67 instructions to the patient or, when appropriate due to age or
68 neurological status of the patient, the patient's guardian; and

69 (3) Shall obtain written informed consent from the patient or
70 patient's guardian for the anesthesia.

71 (e) A dentist who induces general anesthesia/deep conscious
72 sedation shall ensure that the patient's condition is monitored
73 and recorded on a contemporaneous record. The dentist shall use
74 a qualified monitor to monitor and record the patient's condition
75 on a contemporaneous record and a chair side dental assistant.
76 The documented requirements of a qualified monitor monitoring
77 general anesthesia/deep conscious sedation cases are as specified
78 by rule. No permit holder may have more than one patient under
79 general anesthesia at the same time.

80 (f) The patient shall be monitored as follows:

81 (1) Patients shall have continuous monitoring using pulse
82 oximetry and/or equipment required for the standard of care or
83 as specified by rule by a qualified monitor until discharge
84 criteria have been met. The patient's blood pressure, heart rate
85 and oxygen saturation shall be assessed every five minutes and
86 shall be contemporaneously documented in the patient record.
87 The record shall also include documentation of preoperative and
88 postoperative vital signs, all medications administered with
89 dosages, time intervals and route of administration including
90 local anesthesia. The person administering the anesthesia may
91 not leave the patient while the patient is under general
92 anesthesia;

93 (2) During the recovery phase, the patient shall be
94 monitored, including the use of pulse oximetry, by a qualified
95 monitor; and

96 (3) A dentist may not release a patient who has undergone
97 general anesthesia/deep conscious sedation except to the care of
98 a responsible adult third party.

99 (4) When discharging a pediatric patient the dentist shall
100 follow the current edition of AAPD Guidelines for the
101 Monitoring and Management of Pediatric Patients During and
102 After Sedation for Diagnostic and Therapeutic Procedures.

103 (g) The dentist shall assess the patient's responsiveness
104 using preoperative values as normal guidelines and discharge the
105 patient only when the following criteria are met:

106 (1) Vital signs including blood pressure, pulse rate and
107 respiratory rate are stable;

108 (2) The patient is alert and oriented to person, place and time
109 as appropriate to age and preoperative neurological status;

110 (3) The patient can talk and respond coherently to verbal
111 questioning or to preoperative neurological status;

112 (4) The patient can sit up unaided or to preoperative
113 neurological status;

114 (5) The patient can ambulate with minimal assistance or to
115 preoperative neurological status; and

116 (6) The patient does not have uncontrollable nausea or
117 vomiting and has minimal dizziness.

118 (7) A discharge entry shall be made in the patient's record by
119 the dentist indicating the patient's condition upon discharge and
120 the name of the responsible party to whom the patient was
121 discharged.

122 (h) A dentist who induces general anesthesia shall employ
123 the services of a qualified monitor and a chair side dental
124 assistant at all times, who each shall hold a valid BLS/CPR
125 certification and maintains certification as specified by rule.

§30-4A-8. Board to review, inspect and reinspect dentists for issuance of permits.

1 (a) By making application to the board for an anesthesia
2 permit, a dentist consents and authorizes the board to review his
3 or her credentials, inspect or reinspect his or her facilities and
4 investigate any alleged anesthesia mortalities, misadventure or
5 other adverse occurrences. The board shall conduct an in-office
6 review or on-site inspection of any dentist applying for or
7 holding a permit to administer anesthesia.

8 Prior to issuing a permit, the board shall conduct an on-site
9 inspection of facility, equipment and auxiliary personnel of the
10 applicant to determine if, in fact, all the requirements for the
11 permit have been met. This inspection or evaluation, if required,
12 shall be carried out by at least two members of the
13 subcommittee. This evaluation is to be carried out in a manner
14 following the principles, but not necessarily the procedures, set
15 forth by the current edition of the AAOMS Office Anesthesia
16 Evaluation Manual. On-site inspections are required and shall be
17 performed for all Class 3a, 3b and 4 permittees. The board may
18 reinspect annually, at its discretion, but shall perform an on-site
19 inspection for all permit holders at least once every five years
20 except Class 2 permit holders. The board reserves the right to
21 conduct an on-site inspection whenever it deems necessary for
22 all permit holders. All on-site inspections shall be held during
23 regular business hours.

24 (b) Cancellation or failure to appear or be present for a
25 scheduled evaluation by a permit holder, for an unexplained or
26 unexcusable reason, shall be assessed a penalty fee two times the
27 permit holders normal annual renewal fee. The penalty fee shall
28 be separate from the annual renewal fees.

§30-4A-9. Office evaluations.

1 (a) The in-office evaluation shall include:

2 (1) Observation of one or more cases of anesthesia to
3 determine the appropriateness of technique and adequacy of
4 patient evaluation and care;

5 (2) Inspection of facilities, which shall include but not be
6 limited to, the inspection of equipment, drugs and patient records
7 and qualified monitor's certifications and documentation; and

8 (3) The evaluation shall be performed by a team appointed
9 by the board and shall include a member of the subcommittee
10 who holds a current anesthesia permit in the same class or in a
11 higher class than that held by the permit holder being evaluated.

12 (4) Class 2 permit holders may be audited periodically as
13 determined by the committee; and

14 (5) Class 3 and 4 permit holders shall be evaluated once
15 every five years.

16 (b) A dentist utilizing a licensed dentist who holds a current
17 anesthesia permit issued by the board shall have his or her office
18 inspected to the level of a Class 4 permit as specified by section
19 twelve of this article. The office is only approved at that level
20 when the anesthesia permit holder is present and shall have the
21 number of qualified monitors present as required by this article.

22 (c) In addition to the requirements of this article, a treating
23 dentist who applies for a certificate to allow a CRNA to
24 administer anesthesia and sedation to a patient shall maintain a
25 permit as follows:

26 (1) A treating dentist who allows a CRNA to administer
27 limited enteral sedation to a patient shall maintain a Class 3a
28 permit for themselves and the administration site shall be
29 inspected to a Class 4 permit level;

30 (2) A treating dentist who allows a CRNA to administer
31 comprehensive parenteral sedation to a patient shall maintain a
32 Class 3b permit for themselves and the administration site shall
33 be inspected to a Class 4 permit level; and

34 (3) A treating dentist who allows a CRNA to administer
35 general anesthesia/deep conscious sedation to a patient shall
36 maintain a Class 4 permit for themselves and the administration
37 site shall be inspected to a Class 4 permit level.

§30-4A-10. Reporting of death, serious complications or injury.

1 If a death, any serious complication or any injury occurs
2 which may have resulted from the administration of general
3 anesthesia/deep conscious sedation, conscious sedation/moderate
4 sedation, anxiolysis/minimal sedation, or relative
5 analgesia/minimal sedation, the licensee performing the dental
6 procedure shall submit a written detailed report to the board
7 within seventy-two hours of the incident along with copies of the
8 patient's original complete dental records. If the anesthetic agent
9 was administered by a person other than the person performing
10 the dental procedure, that person shall also submit a detailed
11 written report. The detailed report(s) shall include:

12 (1) Name, age and address of patient;

13 (2) Name of the licensee and other persons present during
14 the incident along with their names and addresses;

15 (3) Address where the incident took place;

16 (4) Type of anesthesia and dosages of drugs administered to
17 the patient including local anesthesia;

18 (5) A narrative description of the incident including
19 approximate times and evolution of symptoms; and

20 (6) The anesthesia record and the signed informed consent
21 form for the anesthesia.

§30-4A-11. Immunity from liability.

1 (a) Notwithstanding any other provision of law, no person
2 providing information to the board or to the subcommittee may

3 be held, by reason of having provided the information, to be
4 civilly liable under any law unless the information was false and
5 the person providing information knew or had reason to believe
6 the such information was false.

7 (b) No member or employee of the board or the
8 subcommittee may be held by reason of the performance by him
9 or her of any duty, function or activity authorized or required of
10 the board or the subcommittee to be civilly liable. The foregoing
11 provisions of this subsection do not apply with respect to any
12 action taken by any individual if the individual, in taking the
13 action, was motivated by malice toward any person affected by
14 the action.

§30-4A-12. Facility inspections.

1 (a) The board shall perform an onsite evaluation of Class 3
2 and 4 applicants dental facilities, equipment, techniques and
3 personnel prior to issuing a permit. The board may conduct
4 further on-site evaluations.

5 (b) The board may inspect Class 2 applicants facilities.

§30-4A-13. Issuance of regular annual permits.

1 Upon the recommendation of the subcommittee, the board
2 shall issue permits to applicable dentists. An anesthesia permit
3 shall be renewed annually: *Provided*, That the permittee meets
4 the requirements of this article and has not been subject to
5 disciplinary action prohibiting issuance of the permit.

§30-4A-14. Waiting period for reapplication or reinspection of facilities.

1 A dentist whose application has been denied for failure to
2 satisfy the requirements in the application procedure or the on-
3 site evaluation shall wait thirty days from the date of the denial
4 prior to reapplying and shall submit to another on-site evaluation

5 prior to receiving a permit. The board and the subcommittee
6 shall promptly reinspect the applicant dentist's facilities,
7 techniques, equipment and personnel within ninety days after the
8 applicant has made reapplication.

**§30-4A-15. Application and annual renewal of regular permits;
fees.**

1 The board shall require an initial application fee and an
2 annual renewal fee for Class 2, Class 3 and 4 Permits. Permits
3 expire annually. The board shall renew permits for the use of
4 anesthesia after the permittee satisfies the application for
5 renewal.

**§30-4A-16. Violations of article; penalties for practicing anes-
thesia without a permit.**

1 Violations of any of the provisions of this article, whether
2 intentional or unintentional, may result in the revocation or
3 suspension of the dentist's permit to administer anesthesia;
4 multiple or repeated violations or gross infractions, such as
5 practicing anesthesia without a valid permit may result in
6 suspension of the dentist's license to practice dentistry for up to
7 one year as well as other disciplinary measures as deemed
8 appropriate by the board.

**§30-4A-17. Appointment of Subcommittee; credentials review;
and on-site inspections.**

1 (a) The board shall appoint a subcommittee to carry out the
2 review and on-site inspection of any dentist applying for or
3 renewing a permit under this article.

4 (b) The subcommittee shall make a recommendation for
5 issuing or revoking a permit under this article.

6 (c) This subcommittee shall be known as the West Virginia
7 Board of Dentistry Subcommittee on Anesthesia. The

8 subcommittee shall, at a minimum, consist of one member of the
9 board who shall act as chairman of the subcommittee and two
10 members holding a Class 4 permit and two members holding a
11 Class 3 permit.

12 (d) The subcommittee shall adopt policies and procedures
13 related to the regulation of general anesthesia/deep conscious
14 sedation, conscious sedation/moderate sedation,
15 anxiolysis/minimal sedation, and relative analgesia/minimal
16 sedation with the same being approved by the board. The
17 subcommittee members shall be paid and reimbursed expenses
18 pursuant to article one of this chapter.

ARTICLE 4B. DENTAL LABORATORY SERVICES.

§30-4B-1. Unlawful acts.

1 (a) It is unlawful for any person, other than a dentist or other
2 dental practitioner, to sell, offer for sale or furnish any dental
3 prosthesis or other dental laboratory service to any person who
4 is not a dentist or other dental practitioner.

5 (b) It is unlawful for any person to perform dental laboratory
6 services without a work authorization: *Provided*, That this
7 subsection does not apply to a dentist or other dental practitioner,
8 or to their employees working under their direct supervision,
9 performing dental laboratory services as a part of their own
10 dental practice and for their own dental patients.

11 (c) It is unlawful for any dental laboratory to perform any
12 dental laboratory service without the issuance of a work
13 authorization by a dentist or other dental practitioner.

14 (d) It is unlawful for any dental laboratory or dentist who
15 fabricates a full upper or full lower set of prosthetic dentures not
16 to affix upon the dentures, in a nonremovable manner, the name
17 of the patient, the initials of the dentist's state of practice and
18 license identification.

19 (e) It is unlawful for any dental laboratory either directly or
20 indirectly:

21 (1) To advertise that it is engaged in the business of
22 performing dental laboratory services;

23 (2) To advertise it performs dental laboratory services for
24 members of the public;

25 (3) To advertise a price for the performance of dental
26 laboratory services; or

27 (4) To advertise techniques used or materials employed by
28 it in the performance of dental laboratory services: *Provided,*
29 That this subsection does not prevent dental laboratories from
30 advertising in dental journals or in other professional dental
31 publications or from communicating directly to a dentist and
32 other dental practitioner or from listing the dental laboratory in
33 business and telephone directories if the business and telephone
34 directory announcements are limited to name, address and
35 telephone number and do not occupy more than the number of
36 lines necessary to disclose the information, or from displaying
37 the trade name and address of the dental laboratory on the door
38 of its place of business or on name plates or door plates
39 exhibited on the interior or exterior of the place of business.

§30-4B-2. Work authorization required; contents; retention.

1 (a) No dental laboratory technician may perform any dental
2 laboratory service without the issuance of a work authorization
3 by a dentist or other dental practitioner.

4 (b) Each work authorization shall contain:

5 (1) The name and address of the dental laboratory to which
6 it is directed;

- 7 (2) The case identification;
- 8 (3) A specification of the materials to be used;
- 9 (4) A description of the work to be done and, if necessary,
10 diagrams thereof;
- 11 (5) The date of issue; and
- 12 (6) The signature and address of the dentist or other dental
13 practitioner issuing the work authorization.
- 14 (c) A separate work authorization shall be issued for each
15 patient of the dentist or other dental practitioner for whom a
16 dental laboratory service is to be performed.
- 17 (d) Every work authorization shall be made in duplicate with
18 the original being delivered to the dental laboratory to which it
19 is directed and the copy being retained in the office of the
20 issuing dentist or other dental practitioner. A work authorization
21 shall be saved for a period of two years from its date of issue.

§30-4B-3. Denture identification.

1 A dental laboratory or a dentist who engages in dental
2 laboratory services and who fabricates any full upper or full
3 lower set of prosthetic dentures shall affix upon the dentures, in
4 a nonremovable manner, the name of the patient for whom the
5 dentures are made and the initials of the dentist's state of
6 practice and license identification number.

§30-4B-4. Review of dental laboratory services.

1 The board may review the dental laboratory services of a
2 dental laboratory on a random and general basis without any
3 requirement of a formal complaint or suspicion of impropriety.

CHAPTER 151

**(H. B. 2586 - By Delegates Morgan,
Stephens, Eldridge and Paxton)**

[Passed April 12, 2013; in effect from passage.]

[Approved by the Governor on May 1, 2013.]

AN ACT to amend and reenact §30-6-8 of the Code of West Virginia, 1931, as amended, relating to qualifications for a license to practice embalming; and clarifying the education, apprentice and examination requirements.

Be it enacted by the Legislature of West Virginia:

That §30-6-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.

§30-6-8. Embalmer license requirements.

- 1 (a) The board shall issue a license to practice embalming to
- 2 an applicant who:
 - 3 (1) Is of good moral character;
 - 4 (2) Is eighteen years of age or over;
 - 5 (3) Is a citizen of the United States or is eligible for
 - 6 employment in the United States;
 - 7 (4) Has a high school diploma or its equivalent;
 - 8 (5) Has completed one of the following education
 - 9 requirements, as evidenced by a transcript submitted to the board
 - 10 for evaluation:

11 (A) (i) Has an associate degree from an accredited college or
12 university; or

13 (ii) Has successfully completed at least sixty semester hours
14 or ninety quarter hours of academic work in an accredited
15 college or university toward a baccalaureate degree with a
16 declared major field of study; and

17 (iii) Has graduated from a school of mortuary science,
18 accredited by the American Board of Funeral Service Education,
19 Inc., which requires as a prerequisite to graduation the
20 completion of a course of study of not less than twelve months;
21 or

22 (B) Has a bachelor degree in mortuary science from an
23 accredited college or university;

24 (6) Has completed a one-year apprenticeship, under the
25 supervision of a licensed embalmer and funeral director actively
26 and lawfully engaged in the practice of embalming and funeral
27 directing in this state, which apprenticeship consisted of:

28 (A) Diligent attention to the work in the course of regular
29 and steady employment and not as a side issue to another
30 employment; and

31 (B) The apprentice taking an active part in:

32 (i) The operation of embalming not less than thirty-five dead
33 human bodies; and

34 (ii) Conducting not less than thirty-five funeral services;

35 (7) Passes, with an average score of not less than seventy-
36 five percent, the following examinations:

37 (A) The National Conference of Funeral Services
38 examination at a testing site provided by the national conference,

39 which passage is a condition precedent to taking the state law
40 examination;

41 (B) The state law examination administered by the board,
42 which examination must be offered at least twice each year; and

43 (C) Any other examination required by the board; and

44 (8) Has paid all the appropriate fees.

45 (b) A license to practice embalming issued by the board
46 prior to July 1, 2012, shall for all purposes be considered a
47 license issued under this section: *Provided*, That a person
48 holding a license issued prior to July 1, 2012, must renew the
49 license pursuant to the provisions of this article.

CHAPTER 152

(Com. Sub. for S. B. 401 - By Senators Snyder and Chafin)

[Passed April 30, 2013; in effect July 1, 2013.]

[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact §30-13-6, §30-13-13, §30-13-15 and §30-13-17 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-13-13a, all relating to the Board of Registration for Professional Engineers; providing requirements for registration and certification of engineers, engineer interns and engineering businesses; providing for compensation of, and reimbursement for, members of the board at same rate as legislative interim pay; providing for registration of engineers generally; adding additional classifications of registration; setting forth qualifications for engineer interns; establishing designations for engineers ineligible

to practice; updating examination provisions to comport with changes at the national level; providing emergency rule-making authority to comply with changes in standardized tests; and clarifying the certificate of authorization requirements.

Be it enacted by the Legislature of West Virginia:

That §30-13-6, §30-13-13, §30-13-15 and §30-13-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §30-13-13a, all to read as follows:

ARTICLE 13. ENGINEERS.

§30-13-6. Compensation and expenses.

- 1 Each member of the board shall receive compensation for
- 2 time spent, and reimbursement for reasonable and necessary
- 3 expenses incurred, in the performance of board-related duties
- 4 pursuant to section eleven, article one of this chapter.

§30-13-13. Requirements for registration of professional engineers and certification of engineer interns.

- 1 (a) *General requirements.* – Every person who desires to be
- 2 certified as an engineer intern or to be registered as a
- 3 professional engineer in this state must comply with the
- 4 following requirements:
 - 5 (1) Submission of a completed application specified by the
 - 6 board and payment of the application fee specified by rule of the
 - 7 board;
 - 8 (2) Be at least eighteen years of age;
 - 9 (3) Be of good moral character;
 - 10 (4) Submit statements of reference as specified by rule of the
 - 11 board;

12 (5) Graduate from a four-year engineering curriculum
13 accredited by the Engineering Accreditation Commission of the
14 Accreditation Board for Engineering and Technology
15 (EAC/ABET), or an equivalent as approved by the board as
16 being of satisfactory standing; and

17 (6) Be free of any grounds for disqualification as set forth in
18 subsection of (a) of section twenty-one of this article.

19 (b) *Certification of an engineer intern.* – In addition to the
20 foregoing general requirements, an applicant must meet the
21 following requirements to be certified as an engineer intern in
22 this state:

23 (1) Satisfactorily complete the required examination on the
24 fundamentals of engineering; and

25 (2) Complete each additional requirement that the board may
26 specify by legislative rule.

27 (c) *Registration of a professional engineer.* – In addition to
28 the general requirements specified in subsection (a) of this
29 section, an applicant must meet the following requirements to be
30 certified as a professional engineer in this state:

31 (1) Meet all the requirements for certification as an engineer
32 intern;

33 (2) Submit a record of four years or more of progressive
34 experience in engineering work of a grade and a character that
35 indicates to the board that the applicant may be competent to
36 practice engineering;

37 (3) Satisfactorily complete the required examination on the
38 principles and practice of engineering;

39 (4) Complete each additional requirement that the board may
40 specify by legislative rule.

41 (d) *Registration of a professional engineer through comity*
42 *or reciprocal registration.* – Notwithstanding the requirements
43 of the foregoing subsection of this section, the board may issue
44 a license to an applicant who holds a valid license or other
45 authorization to practice engineering from another state, if the
46 applicant satisfies the general requirements of subsection (a) of
47 this section, satisfies the additional requirements specified by
48 rule of the board and meets one of the following requirements:

49 (1) Holds a license or other authorization to engage in the
50 practice of engineering issued by a proper authority of any
51 jurisdiction, based on requirements that do not conflict with the
52 provisions of this article and possesses credentials that are, in the
53 judgment of the board, of a standard equivalent to or not lower
54 than that specified in the applicable licensure act and rules in
55 effect in this state at the time such license was issued, upon
56 application, which may include a council record with NCEES;
57 or

58 (2) Holds a valid council record with NCEES, which is the
59 compilation of documents maintained by NCEES of an
60 applicant's qualifications as a professional engineer, including
61 official transcripts, engineering examination results, employment
62 verifications and references, which indicates that the applicant
63 meets the requirements of this article.

64 (e) *Certification or registration of qualified applicants.* –
65 The board shall issue a certification to a qualified applicant who
66 meets the requirements for certification as an engineer intern and
67 shall issue a professional engineer registration to a qualified
68 applicant who meets the requirements for registration as a
69 professional engineer.

70 (f) *Continuation of existing registrations and certificates.* –
71 A registration or certificate issued by the board prior to July 1,
72 2013, shall for all purposes be considered a registration or

73 certificate issued under this article: *Provided*, That a person
74 registered or certified prior to July 1, 2013, must renew the
75 registration or certification pursuant to the provisions of this
76 article and the rules of the board.

§30-13-13a. Designations of nonpracticing status.

1 The board may designate a professional engineer as
2 ineligible to practice or offer to practice engineering in this state
3 using one of the following terms:

4 (1) *Professional engineer-retired.* – A registrant may apply
5 for retired status upon certification that he or she is no longer
6 practicing or offering to practice engineering in this state for
7 remuneration.

8 (2) *Professional engineer-inactive.* – A registrant may
9 request inactive status upon affirmation that he or she is no
10 longer practicing or offering to practice engineering in this state.

11 (3) *Professional engineer-lapsed.* – A registrant's license is
12 lapsed when the registrant does not respond to renewal notices
13 or pay the required renewal fees.

14 (4) *Professional engineer-invalidated.* – A registrant's
15 license is invalidated when he or she is unable to provide
16 sufficient proof that any condition of renewal set forth in this
17 article or by board rule has been met.

§30-13-15. Examinations.

1 (a) The board has the power to establish, by legislative rule,
2 the requirements for examination for registration as a
3 professional engineer and certification as an engineer intern
4 including, but not limited to, the following criteria: subject
5 matter, prerequisites for testing, passing score, examination sites
6 and schedules, entities authorized to administer examinations,

7 prerequisites for testing and form of testing, including
8 examination by electronic or other means.

9 (b) The board's rules for examination shall include the
10 following minimum requirements:

11 (1) An examination to qualify to be an engineer intern, to
12 test the applicant's knowledge and understanding of the
13 fundamentals of engineering; and

14 (2) An examination to qualify as a professional engineer, to
15 test the applicant's knowledge and understanding of the
16 principles and practice of engineering.

17 (c) If the board determines that the safe and ethical practice
18 of engineering in this state requires examination of matters
19 specific to the law and practice in this state, the board may also
20 establish criteria, by legislative rule, for an examination of the
21 applicant's knowledge and understanding of this state's statutes,
22 rules, professional ethics and design requirements.

23 (d) A candidate for registration as a professional engineer
24 who fails the examination of the principles and practice of
25 engineering may retake the examination one time upon payment
26 of the fee established by the board. In the event of a second
27 failure, the candidate may not repeat the examination unless the
28 examinee demonstrates to the board that he or she has pursued
29 additional instruction or training to correct the candidate's deficit
30 areas of knowledge.

31 (e) In the event that examination requirements, test
32 administration procedures, scoring or testing methods are
33 modified by a board-approved testing entity providing standard
34 tests for use by the board, the board has the authority to
35 promulgate emergency rules to adopt and reflect those changes.

§30-13-17. Certificates of authorization required; naming of engineering firms.

1 (a) No person or firm is authorized to practice or offer to
2 practice engineering in this state until the person or firm has
3 been issued a certificate of authorization by the board.

4 (b) A person or firm desiring a certificate of authorization
5 must file all the required information with the board on an
6 application form specified by the board. The required
7 information shall include the sworn statement of the engineer in
8 responsible charge who is a professional engineer registered in
9 this state. The board shall issue a certificate of authorization to
10 an applicant who has met all the requirements and paid the fees
11 set forth in board rules.

12 (c) No person or firm is relieved of responsibility for the
13 conduct or acts of its agents, employees, officers or partners due
14 to compliance with the provisions of this article. No individual
15 practicing engineering under the provisions of this article is
16 relieved of responsibility for engineering services performed due
17 to his or her employment or other relationship with a person or
18 firm holding a certificate of authorization.

19 (d) An engineer who renders occasional, part-time or
20 contract engineering services to or for a firm may not be
21 designated as being in responsible charge for the professional
22 activities of the firm unless that engineer is an owner or principal
23 of the firm.

24 (e) The Secretary of State shall not issue a certificate of
25 authority or business registration or license to an applicant
26 whose business includes, among the objectives for which it is
27 established, the words engineer, engineering or any modification
28 or derivation thereof unless the board of registration for this
29 profession has issued to the applicant a certificate of

30 authorization or a letter indicating eligibility to receive the
31 certificate. The certificate or letter from the board shall be filed
32 with the application filed with the Secretary of State to do
33 business in West Virginia.

34 (f) The Secretary of State shall decline to register a trade
35 name or service mark which includes the words engineer,
36 engineering or modifications or derivatives thereof in its
37 business name or logotype except those businesses holding a
38 certificate of authorization issued under the provisions of this
39 article.

40 (g) The certificate of authorization may be renewed in
41 accordance with board rule upon payment of the required
42 renewal fee.

43 (h) Every holder of a certificate of authorization has a duty
44 to notify the board promptly of any change in information
45 previously submitted to the board in an application for a
46 certificate of authorization.

CHAPTER 153

**(Com. Sub. for S. B. 586 - By Senators Plymale,
Prezioso, Snyder and Beach)**

[Passed April 13, 2013; in effect from passage.]

[Approved by the Governor on May 3, 2013.]

AN ACT to repeal §30-27-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-27-3, §30-27-5, §30-27-8, §30-27-11 and §30-27-12 of said code; and to amend and reenact §30-37-7 of said code, all relating to the Board of Barbers and Cosmetologists; licensing schools of aesthetics, barbering, cosmetology, manicuring and massage; transferring authority to

approve licensure for certain schools; clarifying powers and duties of the board; providing requirements for professional licensing, license renewal and work permits; establishing certain student registration requirements; and providing definitions.

Be it enacted by the Legislature of West Virginia:

That §30-27-15 of the Code of West Virginia, 1931, as amended, be repealed; that §30-27-3, §30-27-5, §30-27-8, §30-27-11 and §30-27-12 of said code be amended and reenacted; and that §30-37-7 of said code be amended and reenacted, all to read as follows:

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-3. Definitions.

1 As used in this article, the following words and terms have
2 the following meanings, unless the context clearly indicates
3 otherwise:

4 (a) "Aesthetics" or "esthetics" means any one or any
5 combination of the following acts when done on the human body
6 for compensation and not for the treatment of disease:

7 (1) Administering cosmetic treatments to enhance or
8 improve the appearance of the skin, including cleansing, toning,
9 performing effleurage or other related movements, stimulating,
10 exfoliating or performing any other similar procedure on the skin
11 of the human body or scalp;

12 (2) Applying, by hand or with a mechanical or electrical
13 apparatus, any cosmetics, makeups, oils, powders, clays,
14 antiseptics, tonics, lotions, creams or chemical preparations
15 necessary for the practice of aesthetics to another person's face,
16 neck, back, shoulders, hands, elbows and feet up to and
17 including the knee;

18 (3) The rubbing, cleansing, exercising, beautifying or
19 grooming of another person's face, neck, back, shoulders, hands,
20 elbows and feet up to and including the knee;

21 (4) The waxing, tweezing and threading of hair on another
22 person's body;

23 (5) The wrapping of another person's body in a body wrap;

24 (6) Applying artificial eyelashes and eyebrows; and

25 (7) The lightening of hair on the body except the scalp.

26 (b) "Aesthetician" or "esthetician" means a person licensed
27 under the provisions of this article who engages in the practice
28 of aesthetics.

29 (c) "Applicant" means a person making application for a
30 professional license, license, certificate, registration, permit or
31 renewal under the provisions of this article.

32 (d) "Barber" means a person licensed under the provisions
33 of this article who engages in the practice of barbering.

34 (e) "Barbering" means any one or any combination of the
35 following acts when done on the human body for compensation
36 and not for the treatment of disease:

37 (1) Shaving, shaping and trimming the beard, or both;

38 (2) Cutting, singeing, shampooing, arranging, dressing,
39 tinting, bleaching, or applying lotions or tonics on human hair,
40 or a wig or hairpiece; and

41 (3) Applications, treatments or rubs of the scalp, face, or
42 neck with oils, creams, lotions, cosmetics, antiseptics, powders,
43 or other preparations in connection with the shaving, cutting or
44 trimming of the hair or beard.

45 (f) "Barber crossover" or "cosmetologist crossover" is a
46 person who is licensed to perform barbering and cosmetology.

47 (g) "Barber permanent waving" means the following acts
48 done on the human body for compensation and not for the
49 treatment of disease:

50 (1) The bleaching or tinting of hair; and

51 (2) The permanent waving of hair.

52 (h) "Barber permanent waviest" means a person licensed to
53 perform barbering and barber permanent waving.

54 (i) "Board" means the West Virginia Board of Barbers and
55 Cosmetologists.

56 (j) "Certificate" means an instructor certificate to teach in a
57 school under the provisions of this article.

58 (k) "Certificate holder" means a person certified as an
59 instructor to teach in a school under the provisions of this article.

60 (l) "Cosmetologist" means a person licensed under the
61 provisions of this article who engages in the practice of
62 cosmetology.

63 (m) "Cosmetology" means any one or any combination of
64 the following acts when done on the human body for
65 compensation and not for the treatment of disease:

66 (1) Cutting, styling, shaping, arranging, braiding, weaving,
67 dressing, adding extensions, curling, waving, permanent waving,
68 relaxing, straightening, shampooing, cleansing, singeing,
69 bleaching, tinting, coloring, waxing, tweezing, or similarly work
70 on human hair, or a wig or hairpiece, by any means, including
71 hands, mechanical or electrical devices or appliances;

72 (2) Nail care;

73 (3) Applying by hand or with a mechanical or electrical
74 device or appliance, any cosmetics, makeups, oils, powders,
75 clays, antiseptics, tonics, lotions, creams or chemical
76 preparations necessary for the practice of aesthetics to another
77 person's face, neck, shoulders, hands, elbows and feet up to and
78 including the knee;

79 (4) The rubbing, cleansing, exercising, beautifying or
80 grooming of another person's face, neck, shoulders, hands,
81 elbows and feet up to and including the knee;

82 (5) The wrapping of another person's body in a body wrap;
83 and

84 (6) Performing aesthetics.

85 (n) "General supervision" means:

86 (1) For schools, a master or certified instructor is on the
87 premises and is quickly and easily available; or

88 (2) For salons, a professional licensee is on the premises and
89 is quickly and easily available.

90 (o) "Hair braiding" means any one or any combination of the
91 following acts when done on the human body for compensation
92 and not for the treatment of disease: Braiding, plaiting, twisting,
93 wrapping, threading, weaving, extending or locking of natural
94 human hair by hand or mechanical device.

95 (p) "Hair Styling" means any one or any combination of the
96 following acts when done on the human body for compensation
97 and not for the treatment of disease:

98 (1) Cutting, styling, shaping, arranging, braiding, weaving,
99 dressing, adding extensions, curling, waving, permanent waving,

100 relaxing, straightening, shampooing, cleansing, singeing,
101 bleaching, tinting, coloring, waxing, tweezing, threading or
102 similarly work on human hair, or a wig or hairpiece, by any
103 means, including hands, mechanical or electrical devices or
104 appliances;

105 (2) The rubbing, cleansing, exercising, beautifying or
106 grooming of another person's face, neck, shoulders, hands,
107 elbows and feet up to and including the knee.

108 (q) "Hair Stylist" means a person licensed under the
109 provisions of this article who engages in the practice of hair
110 styling.

111 (r) "License" means a professional license, a salon license
112 or a school license.

113 (s) "Licensed school" means a facility which has been
114 approved by the West Virginia Council for Community and
115 Technical College Education pursuant to section nine, article
116 two-b, chapter eighteen-b of this code, to educate persons to be
117 licensed or issued certain permits under the provisions of this
118 article.

119 (t) "Licensee" means a person, corporation or firm holding
120 a license issued under the provisions of this article.

121 (u) "Nail care" means any one or any combination of the
122 following acts when done on the human body for compensation
123 and not for the treatment of disease:

124 (1) The cleansing, dressing, or polishing of nails of a person;

125 (2) Performing artificial nail service; and

126 (3) The cosmetic treatment of the feet up to the knee and the
127 hands up to the elbow.

128 (v) "Nail technician" or "manicurist" means a person
129 licensed under the provisions of this article who engages in the
130 practice of nail care.

131 (w) "Permit" means a work permit.

132 (x) "Permitee" means a person holding a work permit.

133 (y) "Professional license" means a license to practice as a
134 aesthetician, barber, barber crossover, barber permanent wavist,
135 cosmetologist, cosmetologist crossover or nail technician.

136 (z) "Registration" means a registration issued by the board
137 to a person who rents or leases a booth or chair from a licensed
138 salon owner and operator, or both, or a registration issued by the
139 board to a person who is a student in a school.

140 (aa) "Registrant" means a person who holds a registration
141 under the provisions of this article.

142 (bb) "Salon" means a shop or other facility where a person
143 practices under a professional license.

144 (cc) "Salon license" means a license to own and operate a
145 salon.

146 (dd) "Student registration" means a registration issued by the
147 board to a student to study at a school licensed under the
148 provisions of this article.

§30-27-5. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in this
2 article, by rule, in article one of this chapter and elsewhere in
3 law.

4 (b) The board shall:

- 5 (1) Hold meetings, conduct hearings and administer
6 examinations;
- 7 (2) Establish requirements for licenses, permits, certificates
8 and registrations;
- 9 (3) Establish procedures for submitting, approving and
10 rejecting applications for licenses, permits, certificates and
11 registrations;
- 12 (4) Determine the qualifications of any applicant for
13 licenses, permits, certificates and registrations;
- 14 (5) Prepare, conduct, administer and grade examinations for
15 professional licenses and certificates;
- 16 (6) Determine the passing grade for the examinations;
- 17 (7) Maintain records of the examinations the board or a third
18 party administers, including the number of persons taking the
19 examinations and the pass and fail rate;
- 20 (8) Set operational standards and requirements for licensed
21 schools;
- 22 (9) Hire, discharge, establish the job requirements and fix
23 the compensation of the executive director;
- 24 (10) Maintain an office, and hire, discharge, establish the job
25 requirements and fix the compensation of employees,
26 investigators/inspectors and contracted employees necessary to
27 enforce the provisions of this article: *Provided, That any*
28 *investigator/inspector employed by the board on July 1, 2009,*
29 *shall retain their coverage under the classified service, including*
30 *job classification, job tenure and salary, until that person retires*
31 *or is dismissed: Provided, however, That nothing may prohibit*
32 *the disciplining or dismissal of any investigator/inspector for*
33 *cause;*

34 (11) Investigate alleged violations of the provisions of this
35 article, legislative rules, orders and final decisions of the board;

36 (12) Establish the criteria for the training of
37 investigators/inspectors;

38 (13) Set the requirements for investigations and inspections;

39 (14) Conduct disciplinary hearings of persons regulated by
40 the board;

41 (15) Determine disciplinary action and issue orders;

42 (16) Institute appropriate legal action for the enforcement of
43 the provisions of this article;

44 (17) Report violations of the provisions of this article, and
45 legislative rules promulgated pursuant to this article, alleged to
46 have been committed by a licensed school to the West Virginia
47 Council for Community and Technical College Education. The
48 board may continue to investigate any alleged violation that it
49 receives by May 1, 2013, and shall conclude any such
50 investigation by July 1, 2013. If the board determines that
51 probable cause exists that a violation occurred, the board
52 immediately shall advise and provide its investigation file to the
53 West Virginia Council for Community and Technical College
54 Education;

55 (18) Maintain an accurate registry of names and addresses of
56 all persons regulated by the board;

57 (19) Keep accurate and complete records of its proceedings,
58 and certify the same as may be necessary and appropriate;

59 (20) Establish the continuing education requirements for
60 professional licensees and certificate holders;

61 (21) Issue, renew, combine, deny, suspend, revoke or
62 reinstate licenses, permits, certificates and registrations;

- 63 (22) Establish a fee schedule;
- 64 (23) Propose rules in accordance with the provisions of
65 article three, chapter twenty-nine-a of this code to implement the
66 provisions of this article; and
- 67 (24) Take all other actions necessary and proper to effectuate
68 the purposes of this article.
- 69 (c) The board may:
- 70 (1) Establish joint licenses;
- 71 (2) Contract with third parties to administer the examinations
72 required under the provisions of this article;
- 73 (3) Sue and be sued in its official name as an agency of this
74 state;
- 75 (4) Confer with the Attorney General or his or her assistant
76 in connection with legal matters and questions.

§30-27-8. Professional license requirements.

- 1 (a) An applicant for a professional license to practice as a
2 aesthetician, barber, barber crossover, barber permanent waviest,
3 cosmetologist, hair stylist, cosmetologist crossover or nail
4 technician shall present satisfactory evidence that he or she:
- 5 (1) Is at least eighteen years of age;
- 6 (2) Is of good moral character;
- 7 (3) Has a high school diploma, a GED, or has passed the
8 "ability to benefit test" approved by the United States
9 Department of Education;
- 10 (4) Has graduated from a licensed school which has been
11 approved by the West Virginia Council for Community and

12 Technical College Education or has completed education
13 requirements in another state and meets the licensure provisions
14 of the board;

15 (5) Has passed an examination that tests the applicant's
16 knowledge of subjects specified by the board: *Provided*, That the
17 board may recognize a certificate or similar license in lieu of the
18 examination or part of the examination that the board requires;

19 (6) Has paid the applicable fee;

20 (7) Presents a certificate of health from a licensed physician;

21 (8) Is a citizen of the United States or is eligible for
22 employment in the United States; and

23 (9) Has fulfilled any other requirement specified by the
24 board.

25 (b) A license to practice issued by the board prior to July 1,
26 2009, shall for all purposes be considered a professional license
27 issued under this article: *Provided*, That a person holding a
28 license issued prior to July 1, 2009, must renew the license
29 pursuant to the provisions of this article.

§30-27-11. Work permit.

1 (a) The board may issue a work permit to practice to an
2 applicant who meets the following conditions:

3 (1) Has graduated from a licensed school approved by the
4 West Virginia Council for Community and Technical College
5 Education or has completed education requirements in another
6 state and meets the licensure provisions of the board;

7 (2) Is waiting to take the examination;

8 (3) Has employment in the field in which he or she applied
9 to take the examination and is working under the general
10 supervision of a professional licensee;

- 11 (4) Has paid the work permit fee;
- 12 (5) Has presented a certificate of health issued by a licensed
13 physician;
- 14 (6) Is a citizen of the United States or is eligible for
15 employment in the United States; and
- 16 (7) Meets all the other requirements specified by the board.
- 17 (b) A work permit expires at the end of the month after
18 issuance following the next examination in the specific field. A
19 work permit may be renewed once.
- 20 (c) While in effect, a work permittee is subject to the
21 restrictions and requirements imposed by this article.

§30-27-12. Student registration.

- 1 (a) Prior to commencing studies in a licensed school, a
2 student shall acquire a student registration issued by the board.
- 3 (b) An applicant for a student registration shall present
4 satisfactory evidence that he or she meets the following
5 conditions:
- 6 (1) Is enrolled as a student in a licensed school;
- 7 (2) Is of good moral character;
- 8 (3) Has paid the required fee;
- 9 (4) Has presented a certificate of health issued by a licensed
10 physician; and
- 11 (5) Is a citizen of the United States or is eligible for
12 employment in the United States.

13 (c) The student registration is good during the prescribed
14 period of study for the student.

15 (d) The student may perform acts constituting barbering,
16 barber permanent waving, cosmetology, aesthetics or nail care
17 in a school under the general supervision of a master or certified
18 instructor.

ARTICLE 37. MASSAGE THERAPISTS.

§30-37-7. Requirements for licensure; renewal of licenses; reinstatement; penalties.

1 (a) The board shall propose rules for legislative approval in
2 accordance with article three, chapter twenty-nine-a of this code,
3 establishing a procedure for licensing of massage therapists.
4 License requirements shall include the following:

5 (1) Completion of a program of massage education at a
6 school approved by the West Virginia Council for Community
7 and Technical College Education pursuant to section nine, article
8 two-b, chapter eighteen-b of this code or by a state agency in
9 another state, the District of Columbia or a United States
10 territory which approves educational programs and which meets
11 qualifications for the National Certification Exam administered
12 through the National Certification Board for Therapeutic
13 Massage and Bodywork. This school shall require a diploma
14 from an accredited high school, or the equivalent, and require
15 completion of at least five hundred hours of supervised academic
16 instruction;

17 (2) Successful completion of the National Certification for
18 Therapeutic Massage and Bodywork (NCTMB) examination, or
19 other board approved examination; and

20 (3) Payment of a reasonable fee every two years required by
21 the board which shall compensate and be retained by the board
22 for the costs of administration.

23 (b) A license to practice massage therapy issued by the board
24 prior to July 1, 2006, shall for all purposes be considered a
25 license issued under this section: *Provided*, That a person
26 holding a license to practice massage therapy issued prior to July
27 1, 2006, must renew the license pursuant to the provisions of this
28 article: *Provided, however*, That a person whose license was
29 issued by the board prior to July 1, 2006, and whose license
30 subsequently lapses may, in the discretion of the board, be
31 subject to the licensing requirements of this section.

32 (c) In addition to provisions for licensure, the rules shall
33 include:

34 (1) Requirements for completion of continuing education
35 hours conforming to NCTMB guidelines; and

36 (2) Requirements for issuance of a reciprocal license to
37 licensees of states with requirements which may include the
38 successful completion of the NCTMB examination or other
39 board approved examination.

40 (d) Subject to the provisions of subsection (b) of this section,
41 the board may deny an application for renewal for any reason
42 which would justify the denial of an application for initial
43 licensure.

44 (e) Any person practicing massage therapy during the time
45 his or her license has lapsed is in violation of this article and is
46 subject to the penalties provided in this article.

47 (f) A massage therapist who is licensed by the board shall be
48 issued a certificate and a license number. The current, valid
49 license certificate shall be publicly displayed and available for
50 inspection by the board and the public at a massage therapist's
51 work site.

CHAPTER 154

**(Com. Sub. for H. B. 2531 - By Delegates Morgan,
Stephens, Paxton, Hartman, Ferns, Howell, Folk,
R. Smith, Faircloth, Arvon and J. Nelson)**

[Passed April 13, 2013; in effect from passage.]

[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §30-32-1, §30-32-2, §30-32-3, §30-32-4, §30-32-5, §30-32-6, §30-32-7, §30-32-8, §30-32-9, §30-32-10, §30-32-11, §30-32-12, §30-32-13, §30-32-14, §30-32-15, §30-32-16, §30-32-17, §30-32-18, §30-32-19, §30-32-20 and §30-32-21 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §30-32-22 and §30-32-23, all relating to the Board of Examiners of Speech-Language Pathology and Audiology; setting forth unlawful acts; providing exemptions; specifying applicability of other law; providing definitions; continuing the Board of Examiners for Speech-Language Pathology and Audiology; specifying qualifications of board members; providing terms and conditions of board members' service; providing for election of board officers; providing for compensation and expense reimbursement of board members; setting forth powers and duties of the board; providing rule-making authority; continuing the board of Examiners for Speech-Language Pathology and Audiology Fund; providing qualifications for practicing speech-language pathology or audiology; providing for provisional licenses to practice while attaining required postgraduate professional experience; providing for waiver of requirements for persons who hold a license from another state with substantially equivalent standards; providing for practice pending disposition of application; providing scopes of practice for speech-language pathology and audiology; requiring

speech-language pathology assistants and audiology assistants to register with the board; providing registration and supervision requirements for speech-language pathology assistants and audiology assistants; authorizing telepractice; providing conditions and requirements for telepractice; providing for renewal of licenses and registrations; providing for renewal of lapsed licenses and registrations; providing for the suspension, revocation and refusal to renew licenses and registrations; providing for the reinstatement of revoked licenses and registrations; authorizing actions to enjoin violations; providing for the investigation of complaints; setting forth complaint procedures and hearing procedures; establishing grounds for disciplinary actions; providing for rights of appeal and judicial review; providing that a single act is sufficient to justify disciplinary action; providing for criminal proceedings; providing for criminal penalties; and requiring the Legislative Auditor to present a report to the Joint Standing Committee on Government Organization on the requirements for Speech-Language Pathologists, Audiologists and Assistants to practice in public schools.

Be it enacted by the Legislature of West Virginia:

That §30-32-1, §30-32-2, §30-32-3, §30-32-4, §30-32-5, §30-32-6, §30-32-7, §30-32-8, §30-32-9, §30-32-10, §30-32-11, §30-32-12, §30-32-13, §30-32-14, §30-32-15, §30-32-16, §30-32-17, §30-32-18, §30-32-19, §30-32-20, and §30-32-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto two new sections, designated §30-32-22 and §30-32-23, all to read as follows:

ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.

§30-32-1. Unlawful acts; criminal penalties.

- 1 (a) It is unlawful for any person to practice or offer to
- 2 practice speech-language pathology or audiology in this state, or

3 advertise or use any title or description tending to convey the
4 impression that the person is a speech-language pathologist or
5 audiologist unless the person has been licensed under the
6 provisions of this article, and the license has not expired, been
7 suspended or revoked.

8 (b) As of July 1, 2014, it is unlawful for any person to
9 practice or represent that he or she is qualified to practice as a
10 speech-language pathology assistant or an audiology assistant
11 unless the person has registered with the West Virginia Board of
12 Examiners for Speech-Language Pathology and Audiology under
13 the provisions of this article, and the registration has not expired,
14 been suspended or revoked.

15 (c) It is unlawful for any business entity, except through a
16 licensee, to render any service or engage in any activity which if
17 rendered or engaged in by an individual, would constitute the
18 practices licensed under the provisions of this article.

19 (d) Any person violating any provision of subsections (a),
20 (b) or (c) of this article is guilty of a misdemeanor and, upon
21 conviction thereof, shall be fined not less than \$500 nor more
22 than \$1,000 or confined in jail not more than six months, or both.

§30-32-2. Exemptions.

1 Nothing in this article prevents or restricts:

2 (1) Any person licensed or registered under any other law of
3 this state from practicing the profession and performing services
4 for which he or she is licensed or registered;

5 (2) A licensed physician or surgeon while engaging in the
6 profession for which he or she is licensed;

7 (3) A trained individual providing hearing testing or balance
8 system assessment under the direct supervision of a licensed
9 physician or surgeon;

10 (4) A person credentialed by this state as a teacher of the
11 deaf;

12 (5) The activities and services of persons pursuing a course
13 of study leading to a degree in speech-language pathology or
14 audiology at a college or university, if:

15 (A) These activities and services constitute a part of a
16 planned course of study at that institution;

17 (B) They are designated by a title such as intern, trainee,
18 student or other title clearly indicating the status appropriate to
19 their level of education; and

20 (C) They work under the supervision of a person licensed by
21 this state to practice speech-language pathology or audiology;

22 (6) The activities of persons who are nonresidents of this
23 state from engaging in the practice of speech-language pathology
24 or audiology if the activities of the persons do not exceed five
25 days in any calendar year and they:

26 (A) Meet the qualifications of this article;

27 (B) Register with the board in accordance with procedures
28 specified by the board; and

29 (C) Abide by the standards of professional conduct;

30 (7) The practice of a licensed hearing aid dealer engaged
31 solely in the practice of dealing in or fitting of hearing aids; or

32 (8) The activity of an occupational hearing conservationist
33 engaged in hearing testing as part of a hearing conservation
34 program in compliance with regulations of the Occupational
35 Safety and Health Administration.

§30-32-3. General provisions.

1 The practices licensed under the provisions of this article
2 and the West Virginia Board of Examiners for Speech-Language
3 Pathology and Audiology are subject to the provisions of article
4 one of this chapter, the provisions of this article and any rules
5 promulgated hereunder.

§30-32-4. Definitions.

1 The following terms have the following meanings:

2 (1) “Applicant” means a person applying for a license
3 required by this article.

4 (2) “Assistant” means a registered speech-language
5 pathology assistant or a registered audiology assistant.

6 (3) “Audiologist” means a person who engages in the
7 practice of audiology and is licensed pursuant to the provisions
8 of this article.

9 (4) “Audiology” means the application of principles,
10 methods, and procedures related to hearing and the disorders of
11 hearing and to related language and speech disorders.

12 (5) “Audiology assistant” means a person registered with the
13 board who practices under the supervision of an licensed
14 audiologist.

15 (6) “Audiology disorders” means any and all conditions,
16 whether of organic or nonorganic origin, peripheral or central,
17 that impede the normal process of human communication
18 including, but not limited to, disorders of auditory sensitivity,
19 acuity, function or processing.

20 (7) “Board” means the West Virginia Board of
21 Speech-Language Pathology and Audiology.

22 (8) "Business entity" means any firm, partnership,
23 association, company, corporation, limited partnership, limited
24 liability company or other entity.

25 (9) "Direct supervision" means the actual physical presence
26 of a supervising licensed speech-language pathologist or
27 supervising licensed audiologist in the room where treatment is
28 provided by an assistant.

29 (10) "General supervision" means initial direction and
30 periodic inspection of the activities of an assistant by the
31 supervising licensed speech-language pathologist or supervising
32 licensed audiologist, who is physically present in the building
33 where treatment is provided and is quickly and easily available.

34 (11) "Initial supervision training" means training required of
35 supervising licensed speech-language pathologists and
36 supervising licensed audiologists before providing supervision
37 of assistants.

38 (12) "Instruction" means:

39 (A) Providing speech-language pathology or audiology
40 services in infant/toddler, preschool, elementary or secondary
41 school programs; or

42 (B) Teaching students in institutions of higher education.

43 (13) "License" means a license issued pursuant to the
44 provisions of this article.

45 (14) "Licensee" means a person who is licensed pursuant to
46 the provisions of this article.

47 (15) "Provisional license" means a license issued pursuant
48 to the provisions of this article.

49 (16) "Registrant" means an assistant who is registered
50 pursuant to the provisions of this article.

51 (17) "Registration" means a registration issued pursuant to
52 the provisions of this article.

53 (18) "Speech-language pathologist" means any person who
54 engages in the practice of speech-language pathology and who
55 is licensed pursuant to the provisions of this article.

56 (19) "Speech-language pathology" means the application of
57 principles, methods and procedures related to the development,
58 disorders and effectiveness of human communication and related
59 functions.

60 (20) "Speech-language pathology assistant" means a person
61 registered with the board who practices under the supervision of
62 a licensed speech-language pathologist.

63 (21) "Speech-language pathology disorders" means
64 conditions, whether of organic or nonorganic origin, that impede
65 the normal process of human communication including, but not
66 limited to, disorders and related disorders of speech, articulation,
67 fluency, voice, verbal and written language, Auditory
68 comprehension, cognition/communication, and oral, pharyngeal
69 and/or laryngeal sensorimotor competencies.

70 (22) "Telepractice" means the application of
71 telecommunication technology to deliver speech-language
72 pathology or audiology services through real time interaction
73 from one site to another for assessment, intervention or
74 consultation in a manner sufficient to ensure patient
75 confidentiality.

§30-32-5. Board of Examiners for Speech-Language Pathology and Audiology.

1 (a) The West Virginia Board of Examiners for
2 Speech-Language Pathology and Audiology is continued. The
3 members of the board in office on July 1, 2013 may, unless

4 sooner removed, continue to serve until their respective terms
5 expire or until their successors have been appointed and
6 qualified.

7 (b) The board consists of the following members appointed
8 by the Governor by and with the advice and consent of the
9 Senate:

10 (1) Two persons who are licensed speech-language
11 pathologists;

12 (2) Two persons who are licensed audiologists; and

13 (3) One citizen member who is not licensed or registered
14 under this article.

15 (c) The terms are for three years. No member may serve for
16 more than two consecutive terms.

17 (d) Each licensed member of the board, at the time of his or
18 her appointment, must have held a license in this state for at least
19 three years.

20 (e) Each member of the board must be a resident of this state
21 during the appointment term.

22 (f) No board member may serve as an officer of the West
23 Virginia Speech Language and Hearing Association concurrently
24 with his or her service on the board.

25 (g) A vacancy on the board shall be filled by appointment by
26 the Governor for the unexpired term of the member whose office
27 is vacant.

28 (h) The Governor may remove any member from the board
29 for neglect of duty, incompetency or official misconduct.

30 (i) A licensed member of the board immediately and
31 automatically forfeits membership to the board if his or her
32 license or registration to practice is suspended or revoked.

33 (j) A member of the board immediately and automatically
34 forfeits membership to the board if he or she is convicted of a
35 felony under the laws of any jurisdiction or becomes a
36 nonresident of this state.

37 (k) The board shall elect annually one of its members as
38 chairperson and one of its members as secretary-treasurer who
39 shall serve at the will and pleasure of the board.

40 (l) Each member of the board is entitled to receive
41 compensation and expense reimbursement in accordance with
42 article one of this chapter.

43 (m) A majority of the members of the board constitutes a
44 quorum.

45 (n) The board shall hold at least one annual meeting. Other
46 meetings shall be held at the call of the chairperson or upon the
47 written request of four members, at the time and place as
48 designated in the call or request.

49 (o) Prior to commencing his or her duties as a member of the
50 board, each member shall take and subscribe to the oath required
51 by section five, article four of the Constitution of this state.

52 (p) Board members are immune from civil liability for the
53 performance of their official duties so long as they act in good
54 faith.

§30-32-6. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in this
2 article, by legislative rule, in article one of this chapter and
3 elsewhere in law.

4 (b) The board shall:

5 (1) Hold meetings and conduct hearings;

6 (2) Establish requirements for licenses and registrations;

7 (3) Establish procedures for submitting, approving and
8 rejecting applications for licenses and registrations;

9 (4) Determine the qualifications of any applicant for a
10 license or registration;

11 (5) Communicate disciplinary actions to relevant state and
12 federal authorities, the American Speech-Language-Hearing
13 Association, the West Virginia Speech-Language and Hearing
14 Association and other applicable authorities when public safety
15 is at risk;

16 (6) Maintain an office and hire, discharge, establish the job
17 requirements and fix the compensation of employees and
18 contracted employees necessary to enforce the provisions of this
19 article;

20 (7) Investigate alleged violations of the provisions of this
21 article, legislative rules, orders and final decisions of the board;

22 (8) Conduct disciplinary hearings of persons regulated by the
23 board;

24 (9) Determine disciplinary action and issue orders;

25 (10) Institute appropriate legal action for the enforcement of
26 the provisions of this article;

27 (11) Maintain an accurate registry of names and addresses of
28 all persons regulated by the board;

29 (12) Keep accurate and complete records of its proceedings,
30 and certify the same as may be necessary and appropriate;

31 (13) Issue, renew, combine, deny, suspend, revoke or
32 reinstate licenses and registrations pursuant to the provisions of
33 this article;

34 (14) Establish a fee schedule;

35 (15) Take all actions necessary and proper to effectuate the
36 purposes of this article; and

37 (16) Propose rules in accordance with the provisions of
38 article three, chapter twenty-nine-a of this code to implement the
39 provisions of this article.

40 (c) The board may:

41 (1) Approve and contract with third parties to administer the
42 examinations required under the provisions of this article;

43 (2) Sue and be sued in its official name as an agency of this
44 state;

45 (3) Confer with the Attorney General or his or her assistants
46 in connection with legal matters and questions; and

47 (4) Perform random audits of continuing education,
48 supervision records and documentation of licensure and
49 registration requirements to determine compliance with this
50 article.

§30-32-7. Rulemaking.

1 (a) The board shall propose rules for legislative approval, in
2 accordance with the provisions of article three, chapter
3 twenty-nine-a of this code, to implement the provisions of this
4 article, including:

5 (1) Standards and requirements for licenses and
6 registrations;

7 (2) Requirements, qualifications and designation of third
8 parties to establish educational requirements and to prepare
9 and/or administer examinations and reexaminations;

10 (3) Procedures for the issuance and renewal of a license,
11 registration and provisional license;

12 (4) A fee schedule;

13 (5) Continuing education and competency requirements for
14 licensees and registrants;

15 (6) Establishment of competency standards;

16 (7) The procedures for denying, suspending, revoking,
17 reinstating or limiting the practice of a licensee or registrant;

18 (8) Requirements for reinstatement of revoked licenses and
19 registrations;

20 (9) Guidelines for telepractice;

21 (10) Rules to define the role of the speech-language
22 pathology assistant or audiology assistant, including, but not
23 limited to:

24 (A) The supervision requirements of licensees;

25 (B) The ratio of assistants to licensees;

26 (C) The scope of duties and restrictions of responsibilities of
27 assistants;

28 (D) The frequency, duration and documentation of
29 supervision required under the provisions of this article; and

30 (E) The quantity and content of pre-service and in-service
31 instruction.

32 (11) Professional conduct and ethical standards of practice;
33 and

34 (12) Any other rules necessary to effectuate the provisions
35 of this article.

36 (b) The board may promulgate emergency rules in
37 accordance with section fifteen, article three, chapter
38 twenty-nine-a of this code to establish requirements and
39 procedures for telepractice in accordance with the provisions of
40 this article, including the scope of duties and restrictions of
41 assistants in telepractice.

42 (c) All rules in effect on January 1, 2013 shall remain in
43 effect until they are amended or repealed, and references to
44 provisions of former enactments of this article are interpreted to
45 mean provisions of this article.

§30-32-8. Funds.

1 (a) All fees and other moneys, except administrative fines,
2 received by the board shall be deposited in a separate special
3 revenue fund in the State Treasury designated the "Board of
4 Examiners for Speech-Language Pathology and Audiology
5 Fund", which is continued. The fund is used by the board for the
6 administration of this article. Except as may be provided in
7 article one of this chapter, the board retains the amount in the
8 special revenue account from year to year. No compensation or
9 expense incurred under this article is a charge against the
10 General Revenue Fund.

11 (b) Any amount received as fines, imposed pursuant to this
12 article, shall be deposited into the General Revenue Fund of the
13 State Treasury.

§30-32-9. Qualifications for licensure as a speech-language pathologist.

1 (a) To be eligible for licensure by the board as a
2 speech-language pathologist, the applicant shall:

3 (1) Make application to the board, upon a form prescribed by
4 the board;

5 (2) Pay to the board an application fee as established by the
6 board;

7 (3) Possess at least a master's degree or equivalent in
8 speech-language pathology from an educational institution
9 approved by the board which consists of coursework approved
10 by the board and delineated in legislative rule;

11 (4) Complete supervised clinical practicum experiences from
12 an educational institution or its cooperating programs, the
13 content of which shall be approved by the board and delineated
14 in the rules;

15 (5) Complete a postgraduate professional experience as
16 approved by the board and described in legislative rule;

17 (6) Pass the national examination in speech-language
18 pathology; and

19 (7) Pass a jurisprudence examination developed by the
20 board.

21 (b) Subject to the renewal requirements set forth in section
22 seventeen of this article, a license issued by the board under
23 prior enactments of this article shall for all purposes be
24 considered a license issued under this article.

§30-32-10. Qualifications for licensure as an audiologist.

1 (a) To be eligible for licensure by the board as an
2 audiologist, the applicant shall:

3 (1) Make application to the board, upon a form prescribed by
4 the board;

5 (2) Pay to the board an application fee as established by the
6 board;

7 (3) Possess at least a master's degree or equivalent in
8 audiology from an educational institution approved by the board
9 which consists of coursework approved by the board and
10 delineated in legislative rule;

11 (4) Complete supervised clinical practicum experiences from
12 an educational institution or its cooperating programs, the
13 content of which shall be approved by the board and delineated
14 in the rules;

15 (5) Complete a postgraduate professional experience as
16 approved by the board and described in legislative rule;

17 (6) Pass the national examination in audiology; and

18 (7) Pass a jurisprudence examination developed by the
19 board.

20 (b) Subject to the renewal requirements set forth in section
21 seventeen of this article, a license issued by the board under
22 prior enactments of this article shall for all purposes be
23 considered a license issued under this article.

§30-32-11. Provisional licenses.

1 (a) The board may issue a provisional license to an applicant
2 who is in the process of obtaining postgraduate professional
3 experience and who:

4 (1) Meets the academic, practicum, and examination
5 requirements of this article;

6 (2) Submits an application to the board, upon a form
7 prescribed by the board, including a plan for the content of the
8 postgraduate professional experience; and

9 (3) Pays the fee.

10 (b) A provisional licensee may practice speech-language
11 pathology or audiology under the general supervision of a
12 licensed speech pathologist or audiologist only in the
13 professional field for which the provisional license was issued.

14 (c) The provisional license shall be valid for a term of one
15 year and may be renewed.

**§30-32-12. Waiver of requirements; practice pending disposition
of application.**

1 (a) The board shall waive the national examination
2 requirements in speech-language pathology and/or audiology for
3 an applicant who either:

4 (1) Presents proof of current licensure in a state that has
5 standards that are substantially equivalent to those of this state;
6 or

7 (2) Holds a certificate of clinical competence in
8 speech-language pathology or audiology from the American
9 Speech-Language-Hearing Association in the professional field
10 for which they seek licensure.

11 (b) An applicant who holds current licensure from another
12 state with substantially equivalent standards or who holds the
13 certificate of clinical competence from the American
14 Speech-Language-Hearing Association may practice
15 speech-language pathology or audiology in this state, pending
16 the board's disposition of the application, if the applicant:

17 (1) Is practicing in the professional field in which the
18 licensure or certificate of clinical competence was granted; and

19 (2) Has filed an application with the board and paid the
20 appropriate application fee.

§30-32-13. Scope of practice for speech-language pathology.

1 The scope of practice for speech-language pathology
2 includes:

3 (1) Prevention, screening, consultation, assessment and
4 diagnosis, treatment, intervention, management, counseling and
5 follow-up services for disorders of speech (i.e., articulation,
6 fluency, resonance and voice), language (i.e., phonology,
7 morphology, syntax, preliteracy and language-based skills),
8 swallowing or other upper aerodigestive functions;

9 (2) Cognitive aspects of communication (i.e., attention,
10 memory, problem solving);

11 (3) Establishing augmentative and alternative
12 communication techniques and strategies, including developing,
13 selecting and prescribing of systems and devices (e.g., speech
14 generating devices) and providing training in their use;

15 (4) Providing services to individuals with hearing loss and
16 their families (e.g., Auditory training, speech reading, speech
17 and language intervention secondary to hearing loss;

18 (5) Screening hearing of individuals who can participate in
19 conventional puretone air conduction methods and screening
20 middle ear pathology through screening tympanometry for the
21 purpose of referral for further evaluation: *Provided*, That
22 judgments and descriptive statements about the results of the
23 screenings are limited to pass/fail determinations;

24 (6) Using instrumentation (e.g., videofluoroscopy) to observe,
25 collect data and measure parameters of communication and
26 swallowing as directed by a licensed physician; and

27 (7) Selecting, fitting and establishing effective use of
28 prosthetic/adaptive devices for communication, swallowing or
29 other upper aerodigestive functions.

§30-32-14. Scope of practice for audiology.

1 (a) The scope of practice for audiology includes:

2 (1) Facilitating the conservation of Auditory system
3 function, developing and implementing environmental and
4 occupational hearing conservation programs;

5 (2) Screening, identifying, assessing and interpreting,
6 preventing and rehabilitating peripheral and central Auditory
7 system disorders;

8 (3) Providing and interpreting behavioral and electro-
9 physiological measurements of Auditory and vestibular
10 functions;

11 (4) Selecting, fitting, programming and dispensing of
12 amplification, assistive listening and alerting devices and
13 programming and other systems (e.g., implantative devices) and
14 providing training in their use;

15 (5) Providing audiologic and aural rehabilitation and related
16 counseling services to individuals with hearing impairments and
17 their families;

18 (6) Providing vestibular rehabilitation;

19 (7) Cerumen removal; and

20 (8) Screening of speech-language and other factors affecting
21 communication disorders: *Provided*, That judgments and
22 descriptive statements about the results of the screenings are
23 limited to pass/fail determinations.

24 (b) A person licensed under this article as an audiologist is
25 not required to obtain a license under the provisions of article
26 twenty-six of this chapter.

§30-32-15. Speech-language pathology and audiology assistants; supervision requirements.

1 (a) Commencing July 1, 2014, speech-language pathology
2 assistants and audiology assistants shall register with the board
3 and shall:

4 (1) Possess a minimum of an associate's degree from an
5 institution or technical training program with a program of study
6 designed to prepare the student to be a speech language
7 pathology or audiology assistant;

8 (2) Work only under the supervision of a licensee licensed
9 in the professional field in which the assistant is working; and

10 (3) Meet all requirements set by the board.

11 (b) Licensees who supervise assistants shall:

12 (1) Report to the board the name and field of practice of each
13 assistant working under the licensee's supervision;

14 (2) Complete initial supervision training prior to accepting
15 an assistant for supervision and upgrade supervision training as
16 required by the board;

17 (3) Document preservice training and credentials of the
18 assistant;

19 (4) Provide direct supervision of the first three hours of
20 treatment by the assistant for each patient or client, followed by
21 a minimum of one direct observation for each subsequent two
22 week period and document the direct observation;

23 (5) Provide general supervision and be responsible for the
24 extent, kind and quality of service provided by the assistant and
25 for all services provided by the assistant;

26 (6) Ensure that persons receiving services from an assistant
27 receive prior written notification that services are to be provided,
28 in whole or in part, by an assistant; and

29 (7) Meet all other requirements set by the board.

§30-32-16. Telepractice services.

1 (a) Licensed speech-language pathologists and audiologists
2 may provide services in this state by telepractice.

3 (b) Speech-language pathologists and audiologists providing
4 services by telepractice shall deliver services consistent with the
5 quality of services delivered in person, and shall:

6 (1) Acquire written informed consent from the student,
7 patient or client before the services are provided;

8 (2) Maintain the confidentiality of the student, patient or
9 client as required by law;

10 (3) Provide documentation of the delivery of services;

11 (4) Train assistants before allowing them to assist in the
12 delivery of service by telepractice, and document the training
13 and delivery of service by the assistants; and

14 (5) Meet any other requirements set by the board.

**§30-32-17. Renewal of license or registration; renewal of lapsed
license or registration; suspension, revocation and
refusal to renew; reinstatement of revoked license
or registration.**

1 (a) Licenses, except provisional licenses, and registrations
2 may be renewed biennially, upon documentation of required
3 continuing education and payment of a renewal fee.

4 (b) A license or registration which has lapsed may be
5 renewed within one year of its expiration date in the manner set
6 by the board.

7 (c) A license or registration which has lapsed for more than
8 one year but fewer than five years may be reinstated, upon
9 documentation of continuing education credits earned during the
10 lapsed period equal to the credits required for renewal and
11 payment of a reinstatement fee.

12 (d) A license or registration which has lapsed for more than
13 five years may not be reinstated. A new license or registration
14 may be issued to an applicant who complies with the
15 requirements relating to the issuance of an original license or
16 registration in effect at the time of the application.

17 (e) The board may suspend, revoke or refuse to renew a
18 license or registration for any reason which would justify the
19 denial of an original application for licensure or registration.

20 (f) The board may consider the reinstatement of a license or
21 registration which has been revoked upon a showing that the
22 applicant can resume practicing with reasonable skill and safety.

§30-32-18. Actions to enjoin violations.

1 (a) If the board obtains information that any person has
2 engaged in, is engaging in or is about to engage in any act which
3 constitutes or will constitute a violation of the provisions of this
4 article, the rules promulgated pursuant to this article, or a final
5 order or decision of the board, it may issue a notice to the person
6 to cease and desist in engaging in the act and/or apply to the
7 circuit court in the county of the alleged violation for an order
8 enjoining the act.

9 (b) The circuit courts of this state may issue a temporary
10 injunction pending a decision on the merits, and may issue a
11 permanent injunction based upon its findings in the case.

12 (c) The judgment of the circuit court on an application
13 permitted by the provisions of this section is final unless
14 reversed, vacated or modified on appeal to the West Virginia
15 Supreme Court of Appeals.

**§30-32-19. Complaints; investigations; due process procedure;
grounds for disciplinary action.**

1 (a) The board may upon its own motion based upon credible
2 information, and shall, upon the written complaint of any person,
3 cause an investigation to be made to determine whether grounds
4 exist for disciplinary action under this article or the legislative
5 rules of the board.

6 (b) Upon initiation or receipt of the complaint, the board
7 shall provide a copy of the complaint to the licensee or
8 registrant.

9 (c) After reviewing any information obtained through an
10 investigation, the board shall determine if probable cause exists
11 that the licensee or registrant has violated any provision of this
12 article.

13 (d) Upon a finding that probable cause exists that the
14 licensee or registrant has violated any provision of this article or
15 rules promulgated pursuant to this article, the board may enter
16 into a consent decree or hold a hearing for the suspension or
17 revocation of the license or registration or the imposition of
18 sanctions against the licensee or registrant.

19 (e) Any member of the board may issue subpoenas and
20 subpoenas duces tecum to obtain testimony and documents to aid
21 in the investigation of allegations against any person regulated
22 by the article.

23 (f) Any member of the board may sign a consent decree or
24 other legal document on behalf of the board.

25 (g) The board may, after notice and opportunity for hearing,
26 deny or refuse to renew, suspend or revoke the license or
27 registration of, impose probationary conditions upon or take
28 disciplinary action against, any licensee or registrant for any of
29 the following reasons once a violation has been proven by a
30 preponderance of the evidence:

31 (1) Obtaining a license or registration by fraud,
32 misrepresentation or concealment of material facts;

33 (2) Being convicted of a felony or misdemeanor crime of
34 moral turpitude;

35 (3) Being guilty of unprofessional conduct as defined by
36 legislative rule of the board;

37 (4) Violating provisions of this article, rule or a lawful order
38 of the board;

39 (5) Providing substandard care due to a deliberate or
40 negligent act or failure to act regardless of whether actual injury
41 to a patient or client is established;

42 (6) As an assistant, exceeding the authority to perform
43 components of service selected and delegated by the supervising
44 speech-language pathologist or audiologist regardless of whether
45 actual injury to a patient is established;

46 (7) Knowingly delegating responsibilities to an individual
47 who does not have the knowledge, skills or abilities to perform
48 those responsibilities;

49 (8) As a licensee, failing to provide appropriate supervision
50 to a speech-language pathology assistant or audiology assistant
51 in accordance with this article and legislative rules of the board;

52 (9) Practicing when competent services to recipients may not
53 be provided due to physical or mental impairment;

54 (10) Having had a speech-language pathologist or
55 audiologist license or assistant registration revoked or
56 suspended, other disciplinary action taken, or an application for
57 licensure or registration refused, revoked or suspended by the
58 proper authorities of another jurisdiction;

59 (11) Engaging in sexual misconduct which includes:

60 (A) Initiating or soliciting sexual relationships, whether
61 consensual or nonconsensual, while a professional relationship
62 exists between the licensee or registrant and a patient or client;
63 or

64 (B) Making sexual advances, requesting sexual favors or
65 engaging in physical contact of a sexual nature with a patient or
66 client;

67 (12) Aiding or abetting a person who is not licensed or
68 registered in this state and who directly or indirectly performs
69 activities requiring a license or registration;

70 (13) Abandoning or neglecting a patient or client in need of
71 immediate professional care without making reasonable
72 arrangements for the continuation of care; or

73 (14) Engaging in any act which has endangered or is likely
74 to endanger the health, welfare or safety of the public.

75 (h) Disciplinary action may include:

76 (1) Reprimand;

77 (2) Probation;

78 (3) Administrative fine, not to exceed \$1,000 per day per
79 violation;

80 (4) Mandatory attendance at continuing education seminars
81 or other training;

82 (5) Practicing under supervision or other restriction;

- 83 (6) Requiring the licensee or registrant to report to the board
84 for periodic interviews for a specified period of time;
- 85 (7) Denial, suspension, revocation or nonrenewal of license
86 or registration; or
- 87 (8) Other disciplinary action considered by the board to be
88 necessary to protect the public, including advising other parties
89 whose legitimate interests may be at risk.

§30-32-20. Procedures for hearing; right of appeal.

- 1 (a) Notice and hearing requirements are governed by the
2 provisions of article one of this chapter.
- 3 (b) The board may conduct the hearing or elect to have an
4 administrative law judge conduct the hearing.
- 5 (c) If the hearing is conducted by an administrative law
6 judge, the administrative law judge shall prepare a proposed
7 written order at the conclusion of a hearing containing findings
8 of fact and conclusions of law. The proposed order may contain
9 proposed disciplinary actions if the board so directs. The board
10 may accept, reject or modify the decision of the administrative
11 law judge.
- 12 (d) Any member of the board has the authority to administer
13 oaths, examine any person under oath and issue subpoenas and
14 subpoenas duces tecum.
- 15 (e) If, after a hearing, the board determines the licensee or
16 registrant has violated any provision of this article or the board's
17 rules, a formal written decision shall be prepared which contains
18 findings of fact, conclusions of law and a specific description of
19 the disciplinary actions imposed.

§30-32-21. Judicial review.

- 1 Any licensee or registrant adversely affected by a decision
2 of the board entered after a hearing may obtain judicial review

3 of the decision in accordance with section four, article five,
4 chapter twenty-nine-a of this code, and may appeal any ruling
5 resulting from judicial review in accordance with article six,
6 chapter twenty-nine-a of this code.

§30-32-22. Single act evidence of practice.

1 In any action brought or in any proceeding initiated under
2 this article, evidence of the commission of a single act prohibited
3 by this article is sufficient to justify a penalty, injunction,
4 restraining order or conviction without evidence of a general
5 course of conduct.

§30-32-23. Required update of review of Legislative Auditor.

1 On or before December 1, 2014, the Legislative Auditor
2 shall update the Sunrise Report of January 2013 on the
3 requirements for speech-language pathologists, audiologists and
4 assistants to practice in public schools, and present the report to
5 the Joint Standing Committee on Government Organization, with
6 recommendations.

CHAPTER 155

**(Com. Sub. for H. B. 2730 - By Delegates Morgan,
Stephens, Azinger, Diserio, Ferns, Jones, Paxton,
Perry, D. Poling, Romine and Swartzmiller)**

[Passed April 13, 2013; in effect ninety days from passage.]

{Approved by the Governor on May 2, 2013.}

AN ACT to amend and reenact §30-38-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-38-19, all relating to requirements to

perform appraisals; providing requirements for licensure or certification by reciprocity; and clarifying the requirements for temporary permits.

Be it enacted by the Legislature of West Virginia:

That §30-38-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §30-38-19, all to read as follows:

**ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING
AND CERTIFICATION ACT.**

§30-38-5. Reciprocal credentialing.

1 The board shall issue a reciprocal license or certification to
2 an applicant from another state if the applicant holds a valid
3 license or certification from a state whose licensing and
4 certification program:

5 (1) Is in compliance with the provisions of Title XI of the
6 Financial Institutions Reform, Recovery and Enforcement Act of
7 1989 [12 U.S.C. 3331-3351] as amended by the Dodd-Frank
8 Wall Street Reform and Consumer Protection Act of 2010; and

9 (2) That has credentialing requirements that meet or exceed
10 those of West Virginia.

§30-38-19. Temporary permit.

1 (a) The board may issue a temporary permit to perform one
2 specific assignment relating to the appraisal of real estate or real
3 property in this state to an applicant who:

4 (1) Completes an application;

5 (2) Pays a nonrefundable application fee;

6 (3) Provides an irrevocable consent that service of process
7 upon him or her may be made by service of process to the
8 Secretary of State if, in an action against the applicant in a court
9 of this state arising out of the applicant's activities as a real
10 estate appraiser in this state, the plaintiff cannot, in the exercise
11 of due diligence, effect personal service upon the applicant; and

12 (4) Meets the requirements for a temporary permit as
13 established by the board by legislative rule.

14 (b) The temporary permit is subject to the terms, conditions
15 and limitations set forth by the board by legislative rule.

CHAPTER 156

**(Com. Sub. for H. B. 2608 - By Delegates Staggers,
Morgan, Swartzmiller, R. Phillips, Diserio, Romine,
Azinger, Border and Householder)**

[Passed April 12, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §30-38-6, §30-38-7 and §30-38-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §30-38A-1, §30-38A-2, §30-38A-3, §30-38A-4, §30-38A-5, §30-38A-6, §30-38A-7, §30-38A-8, §30-38A-9, §30-38A-10, §30-38A-11, §30-38A-12, §30-38A-13, §30-38A-14, §30-38A-15, §30-38A-16 and §30-38A-17, all relating to regulating appraisal management companies; requiring appraisal management companies to be registered with the West Virginia Real Estate Appraiser Licensing and Certification Board; adding a member representing appraisal

management companies to the board; updating the duties, powers and rulemaking authority of the board; prohibiting any person or firm from performing or offering to perform appraisal management services without a registration issued by the board; defining certain terms; setting forth requirements for registration, including written applications, verifications and criminal background checks; providing exemptions from registration requirements; requiring surety bonds; setting forth duties of appraisal management companies; authorizing certain fees; requiring appraisal management companies to designate a controlling person; establishing requirements and authorizing complaints for the removal of an appraiser from an appraiser panel; setting forth duties of appraisal management companies; defining what constitutes unprofessional conduct; setting forth prohibited acts; authorizing disciplinary action; providing for hearing and notice procedures; authorizing civil penalties; and authorizing the board to seek injunctive relief.

Be it enacted by the Legislature of West Virginia:

That §30-38-6, §30-38-7 and §30-38-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new article, designated §30-38A-1, §30-38A-2, §30-38A-3, §30-38A-4, §30-38A-5, §30-38A-6, §30-38A-7, §30-38A-8, §30-38A-9, §30-38A-10, §30-38A-11, §30-38A-12, §30-38A-13, §30-38A-14, §30-38A-15, §30-38A-16 and §30-38A-17, all to read as follows:

ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

§30-38-6. Board created; appointments, qualifications, terms, oath, removal of members; quorum; meetings; disqualification from participation; compensation; records; employing staff.

1 (a) The West Virginia real estate appraiser licensing and
2 certification board, which consists of nine members appointed by
3 the Governor with the advice and consent of the Senate, is
4 continued.

5 (1) Each member shall be a resident of the state of West
6 Virginia, except the appraisal management company repre-
7 sentative is not required to be a resident of West Virginia.

8 (2) Four members shall be certified real estate appraisers
9 having at least five years' experience in appraisal as a principal
10 line of work immediately preceding their appointment, and shall
11 remain certified real estate appraisers throughout their terms.

12 (3) Two members shall have at least five years' experience
13 in real estate lending as employees of financial institutions.

14 (4) Two members may not be engaged in the practice of real
15 estate appraisal, real estate brokerage or sales or have any
16 financial interest in these practices.

17 (5) One member shall be a representative from an appraisal
18 management company registered under the provisions of article
19 thirty-eight-a of this chapter.

20 (6) No member of the board may concurrently be a member
21 of the West Virginia real estate commission.

22 (7) Not more than two appraiser members may be appointed
23 from each congressional district.

24 (b) Members will be appointed for three-year terms, which
25 are staggered in accordance with the initial appointments under
26 prior enactment of this act.

27 (1) No member may serve for more than three consecutive
28 terms.

29 (2) Before entering upon the performance of his or her
30 duties, each member shall subscribe to the oath required by
31 section five, article four of the constitution of this state.

32 (3) The Governor shall, within sixty days following the
33 occurrence of a vacancy on the board, fill the vacancy by
34 appointing a person who meets the requirements of this section
35 for the unexpired term.

36 (4) Any member may be removed by the governor in case of
37 incompetency, neglect of duty, gross immorality or malfeasance
38 in office.

39 (c) The board shall elect a chairman.

40 (d) A majority of the members of the board constitutes a
41 quorum.

42 (e) The board shall meet at least once in each calendar
43 quarter on a date fixed by the board.

44 (1) The board may, upon its own motion, or shall upon the
45 written request of three members of the board, call additional
46 meetings of the board upon at least twenty-four hours' notice.

47 (2) No member may participate in a proceeding before the
48 board to which a corporation, partnership or unincorporated
49 association is a party, and of which he or she is or was at any
50 time in the preceding twelve months a director, officer, owner,
51 partner, employee, member or stockholder.

52 (3) A member may disqualify himself or herself from
53 participation in a proceeding for any other cause the member
54 considers sufficient.

55 (f) The appointed members will receive compensation and
56 expense reimbursement in accordance with the provisions of
57 section eleven, article one of this chapter.

58 (g) The board may employ staff as necessary to perform the
59 functions of the board, to be paid out of the board fund created
60 by the provisions of this article. Persons employed by any real
61 estate agent, broker, appraiser or lender, or by any partnership,
62 corporation, association or group engaged in any real estate
63 business, may not be employed by the board.

§30-38-7. General powers and duties.

- 1 The board shall:
 - 2 (a) Define by rule the type of educational experience,
3 appraisal experience and equivalent experience that will meet the
4 statutory requirements of this article;
 - 5 (b) Establish examination specifications as prescribed herein
6 and provide for appropriate examinations;
 - 7 (c) Establish registration requirements and procedures for
8 appraisal management companies under the provisions of article
9 thirty-eight-a of this chapter;
 - 10 (d) Approve or disapprove applications for certification and
11 licensure;
 - 12 (e) Approve or disapprove applications for registration under
13 the provisions of article thirty-eight-a of this chapter;
 - 14 (f) Define by rule continuing education requirements for the
15 renewal of certifications and licenses;
 - 16 (g) Censure, suspend or revoke licenses and certification as
17 provided in this article;
 - 18 (h) Suspend or revoke registrations under the provisions of
19 article thirty-eight-a of this chapter;
 - 20 (i) Hold meetings, hearings and examinations;

21 (j) Establish procedures for submitting, approving and
22 disapproving applications;

23 (k) Maintain an accurate registry of the names, addresses and
24 contact information of all persons certified or issued a license to
25 practice under this article;

26 (l) Maintain an accurate registry of the names, addresses and
27 contact information of all persons and firms registered under the
28 provisions of article thirty-eight-a of this chapter;

29 (m) Maintain accurate records on applicants and licensed or
30 certified real estate appraisers;

31 (n) Maintain accurate records on applicants under the
32 provisions of article thirty-eight-a of this chapter;

33 (o) Issue to each licensed or certified real estate appraiser a
34 pocket card with the appraiser's name and license or certification
35 number. Pocket cards are the property of the State of West
36 Virginia and, upon suspension or revocation of the license to
37 practice pursuant to this article, will be returned immediately to
38 the board;

39 (p) Issue registration numbers to registrants under the
40 provisions of article thirty-eight-a of this chapter;

41 (q) Deposit all fees collected by the board to the credit of the
42 West Virginia appraiser licensing and certification board fund
43 established in the office of the State Treasurer. The board shall
44 disburse moneys from the account to pay the cost of board
45 operation. Disbursements from the account may not exceed the
46 moneys credited to it;

47 (r) Keep records and make reports as required by article one
48 of this chapter; and

49 (s) Perform any other functions and duties necessary to carry
50 out the provisions of this article and article thirty-eight-a of this
51 chapter.

§30-38-9. Rulemaking.

1 (a) The board may propose rules for legislative approval in
2 accordance with the provisions of article three, chapter twenty-
3 nine-a of this code, to provide for:

4 (1) Licensure and certification requirements, including
5 requirements for applications, examinations, reciprocity,
6 temporary permits, apprentice permits and reinstatement;

7 (2) Registration requirements, including delinquent and
8 expired registrations, for appraisal management companies under
9 the provisions of article thirty-eight-a of this chapter;

10 (3) Fees for licenses, renewals of licenses and other services
11 provided by the board;

12 (4) A fee schedule for registrations of appraisal management
13 companies under the provisions of article thirty-eight-a of this
14 chapter;

15 (5) Surety bond requirements for registrations of appraisal
16 management companies under the provisions of article thirty-
17 eight-a of this chapter;

18 (6) Requirements and procedures for appraisal management
19 companies to maintain records under the provisions of article
20 thirty-eight-a of this chapter;

21 (7) Experience, education and continuing education
22 requirements and approval of courses; and

23 (8) Any other purpose to carry out the requirements of this
24 article and article thirty-eight-a of this chapter.

25 (b) The rule governing appraiser qualifications must include
26 requirements which meet or exceed the education, experience
27 and examination requirements issued or endorsed by the
28 appraisal qualifications board of the appraisal foundation.

29 (c) Any rules in effect on the effective date of the
30 reenactment of this section during the regular session of the
31 legislature in 2013 will remain in effect until amended,
32 modified, repealed or replaced, except that references to
33 provisions of former enactments of this act are interpreted to
34 mean provisions of this article.

ARTICLE 38A. APPRAISAL MANAGEMENT COMPANIES REGISTRATION ACT.

§30-38A-1. Unlawful acts.

1 (a) Commencing July 1, 2014, it is unlawful for any person
2 or firm to perform or offer to perform appraisal management
3 services, or act as an appraisal management company within this
4 state without a registration issued by the West Virginia Real
5 Estate Appraiser Licensing and Certification Board under the
6 provisions of this article.

7 (b) Commencing July 1, 2014, it is unlawful for any person
8 or firm not registered under the provisions of this article to
9 advertise or use a title or description conveying the impression
10 that the person or firm is registered to perform appraisal
11 management services or registered to act as an appraisal
12 management company within this state.

§30-38A-2. Applicable law.

1 Appraisal management companies and appraisal
2 management services covered under the provisions of this article
3 are subject to the requirements set forth in this article and the
4 rules promulgated hereunder, and the provisions of article one
5 and article thirty-eight of this chapter.

§30-38A-3. Definitions.

1 As used in this article, the following words and terms have
2 the following meanings, unless the context clearly indicates
3 otherwise:

4 (a) “Applicant” means a person or firm making an
5 application for registration under the provisions of this article.

6 (b) “Appraisal” means an analysis, opinion or conclusion
7 prepared by a real estate appraiser relating to the nature, quality,
8 value or utility of specified interests in, or aspects of, identified
9 real estate or identified real property. An appraisal may be
10 classified by the nature of the assignment as a valuation
11 appraisal, an analysis assignment or a review assignment.

12 (c) “Appraisal management company” means a person or
13 firm that performs or provides appraisal management services,
14 directly or indirectly, through the use of software products or
15 online, or by any means of communication.

16 (d) “Appraisal management services” means the business of
17 managing the process of having an appraisal performed for
18 compensation or pecuniary gain, including but not limited to any
19 of the following actions:

20 (1) Conducting business directly or indirectly by telephone,
21 electronically, mail or in person;

22 (2) Providing related administrative and clerical duties;

23 (3) Recruiting, selecting or retaining appraisers;

24 (4) Verifying qualifications of appraisers;

25 (5) Establishing and administering an appraiser panel;

26 (6) Receiving appraisal orders from clients;

27 (7) Contracting and negotiating fees with appraisers to
28 perform appraisal services;

29 (8) Receiving appraisals from the appraiser and submitting
30 completed appraisals to clients;

31 (9) Tracking and determining the status of orders for
32 appraisals;

33 (10) Reviewing, verifying and conducting quality control of
34 a completed appraisal;

35 (11) Collecting fees from the clients; and

36 (12) Compensating appraisers for appraisal services
37 rendered.

38 (e) "Appraisal review" means the act of developing and
39 communicating an opinion about the quality of another
40 appraiser's work that was performed as part of an appraiser
41 assignment. The review does not include:

42 (1) An examination of an appraisal for grammatical,
43 typographical or other similar errors that do not make a
44 substantive valuation change; or

45 (2) A general examination for compliance including
46 regulatory and/or client requirements as specified in the
47 agreement process that do not communicate an opinion as to the
48 valuation conclusion.

49 (f) "Appraisal services" means the practice of developing an
50 opinion of the value of real estate in conformity with the
51 minimum USPAP standards.

52 (g) "Appraiser" means a person licensed or certified, under
53 the provisions of article thirty-eight of this chapter, to perform
54 an appraisal.

55 (h) "Appraiser panel" means a group of appraisers that
56 perform appraisals for an appraisal management company as
57 independent contractors.

58 (i) "Automated valuation model (AVM)" means a
59 mathematically based computer software program that produces
60 an estimate of market value based on market analysis of location,
61 market conditions, and real estate characteristics from
62 information that was previously and separately collected.

63 (j) "Board" means the West Virginia Real Estate Appraiser
64 Licensing and Certification Board established under the
65 provisions of article thirty-eight of this chapter.

66 (k) "Client" means a person or firm that contracts or enters
67 into an agreement with an appraisal management company for
68 the performance of an appraisal.

69 (l) "Controlling person" means a person authorized by an
70 appraisal management company to contract or enter into
71 agreements with clients and independent appraisers for the
72 performance of appraisal services and who has the power to
73 manage the appraisal management company.

74 (m) "Firm" means a corporation, limited liability company,
75 partnership, sole proprietorship or any other business entity.

76 (n) "Registrant" means a person or firm holding a
77 registration issued by the board under the provisions of this
78 article.

79 (o) "Registration" means a registration issued by the board
80 under the provisions of this article.

81 (p) "State" means the State of West Virginia.

82 (q) "USPAP" means the Uniform Standards of Professional
83 Appraisal Practice.

§30-38A-4. Registration requirements.

1 (a) A person or firm performing or offering to perform
2 appraisal management services or acting as an appraisal
3 management company within this state shall be registered with
4 the board by July 1, 2014.

5 (b) A firm applying for a registration may not be owned,
6 directly or indirectly, by any employee or consultant who is:

7 (1) A person who has had a license or certificate to act as an
8 appraiser refused, denied, canceled or revoked in this state or
9 any other jurisdiction, unless the license or certificate was
10 subsequently granted or reinstated; or

11 (2) A firm that employs a person who has had a license or
12 certificate to act as an appraiser refused, denied, canceled,
13 revoked or surrendered in this state or any other jurisdiction,
14 unless the license or certificate was subsequently granted or
15 reinstated.

16 (c) The board may issue a registration to perform appraisal
17 management services or act as an appraisal management
18 company to a person or firm that:

19 (1) Makes written application to the board as set out in
20 section six of this article;

21 (2) Submits certifications as set out in section seven of this
22 article;

23 (3) Submits national and state criminal background checks
24 as set out in section eight of this article;

25 (4) Posts a surety bond as set out in section nine of this
26 article;

27 (5) Pays the applicable fees as set out in section ten of this
28 article;

29 (6) Has a designated controlling person as set out in section
30 eleven of this article; and

31 (7) Meets any other requirement set by the board.

32 (d) The registrations issued under the provisions of this
33 article shall be renewed annually on July 1.

34 (e) Registrations not renewed in a timely manner are
35 delinquent. To reinstate a delinquent registration, the registrant
36 must pay a monthly penalty, as set by the board.

37 (f) A registration that has been delinquent for more than
38 three months shall be considered expired and a new application
39 for registration is required.

40 (g) The board shall issue a registration number to each
41 appraisal management company registered in this state.

42 (h) The board shall keep a list of appraisal management
43 company registered in this state and publish the list on its
44 website.

§30-38A-5. Exemptions.

1 This article does not apply to:

2 (a) A financial institution, including a department or unit
3 within an institution that is regulated by an agency of this state
4 or the United States government; or

5 (b) An appraisal management company that is a subsidiary
6 wholly owned and controlled by a financial institution regulated
7 by a federal financial institution regulatory agency.

§30-38A-6. Written application requirements.

1 (a) The written application shall be submitted on a form
2 prescribed by the board and shall include:

3 (1) The name, the street and mailing address and the contact
4 information, including telephone number and e-mail address, of
5 the person or firm seeking registration;

6 (2) The name, the street and mailing address and the contact
7 information, including telephone number and e-mail address, of
8 each owner of more than ten percent of the firm seeking
9 registration;

10 (3) The name, the street and mailing address and the contact
11 information, including telephone number and e-mail address, of
12 the controlling person of the firm seeking registration; and

13 (4) (A) If the applicant is a domestic firm, the designation of
14 an agent for service of process; or

15 (B) If the applicant is a foreign firm, documentation that the
16 foreign firm is authorized to do business in West Virginia and
17 that an agent for service of process has been designated and the
18 following has been submitted:

19 (i) A copy of the filing with the Secretary of State's Office
20 appointing an agent for service of process; and

21 (ii) A certificate of authority issued by the Secretary of State.

22 (b) The board shall maintain a list of all applicants for
23 registration that includes the information in the written
24 application.

§30-38A-7. Certification requirements.

1 (a) The certification for registration shall be in writing, on a
2 form prescribed by the board and signed by the applicant or
3 controlling person. The certification shall include statements that
4 the applicant:

5 (1) Has a process in place to verify that any person used as
6 an appraiser or added to the appraiser panel of the applicant is a
7 licensed or certified appraiser in good standing in West Virginia;

8 (2) Has set requirements to verify that appraisers are
9 geographically competent and can perform the appraisals
10 assigned;

11 (3) Has set procedures for an appraiser, licensed or certified
12 in this state or in any state with a minimum of the same
13 certification level for the property type as the appraiser who
14 performed the appraisal, to review the work of the appraisers
15 performing appraisals for the applicant to verify that the
16 appraisals are being conducted in accordance with the minimum
17 USPAP standards;

18 (4) Will require appraisals to be conducted independently
19 and free from inappropriate influence and coercion as required
20 by the appraisal independence standards established under
21 Section 129E of the Truth in Lending Act and the rules and
22 regulations issued pursuant to the Act, including the requirement
23 that appraisers be compensated at a customary and reasonable
24 rate when the appraisal management company is providing
25 services for a consumer credit transaction secured by the
26 principal dwelling of a consumer;

27 (5) Maintains a detailed record of each request for appraisal
28 it receives from a client and the appraiser that performs the
29 appraisal; and

30 (6) Has submitted any other information required by the
31 board.

32 (b) The applicant, each owner who is an employee of or
33 consultant for the applicant and any controlling person shall
34 submit a written verification, on a form prescribed by the board,
35 that includes statements that:

36 (1) The written application and verification for registration
37 contain no false or misleading statements;

38 (2) The applicant has complied with the requirements of this
39 article;

40 (3) The applicant, each owner who is an employee of or
41 consultant for the applicant, and the controlling person of the
42 firm seeking registration has not pleaded guilty or nolo
43 contendere to or been convicted of a felony;

44 (4) Within the past ten years, the applicant, each owner who
45 is an employee of or consultant for the applicant, and the
46 controlling person of the firm seeking registration has not
47 pleaded guilty or nolo contendere to or been convicted of:

48 (A) A misdemeanor involving mortgage lending or real
49 estate appraisals; or

50 (B) An offense involving breach of trust or fraudulent or
51 dishonest dealing;

52 (5) The applicant, each owner who is an employee of or
53 consultant for the applicant, and the controlling person of the
54 firm seeking registration are of good character and reputation
55 and that none of them has had a license or certificate to act as an
56 appraiser refused, denied, canceled, revoked or surrendered in
57 this state or any other jurisdiction, and the license or certification
58 was not subsequently granted or reinstated;

59 (6) The applicant, each owner who is an employee of or
60 consultant for the applicant, and the controlling person of the
61 firm seeking registration are not permanently or temporarily
62 enjoined by a court of competent jurisdiction from engaging in
63 or continuing any conduct or practice involving appraisals,
64 appraisal management services or operating an appraisal
65 management company;

66 (7) The applicant, each owner who is an employee of or
67 consultant for the applicant, and the controlling person of the
68 firm seeking registration are not the subject of an order of the
69 board or any other jurisdiction's agency that regulates appraisal
70 management companies that denied, suspended or revoked the
71 applicant's or firm's privilege to operate as an appraisal
72 management company;

73 (8) The applicant, each owner who is an employee of or
74 consultant for the applicant, and the controlling person of the
75 firm seeking registration have not acted as an appraisal
76 management company while not being properly registered by the
77 board; and

78 (9) Set forth any other requirements of the board.

§30-38A-8. Background check requirements.

1 (a) Upon application, the applicant, each owner who is an
2 employee of or consultant for the applicant, and the controlling
3 person of the firm seeking registration shall submit to a state and
4 national criminal history record check, as set forth in this
5 section.

6 (1) This requirement is found not to be against public policy.

7 (2) The criminal history record check shall be based on
8 fingerprints submitted to the West Virginia State Police or its
9 assigned agent for forwarding to the Federal Bureau of
10 Investigation.

11 (3) The applicant shall meet all requirements necessary to
12 accomplish the state and national criminal history record check,
13 including:

14 (A) Submitting fingerprints for the purposes set forth in this
15 subsection; and

16 (B) Authorizing the board, the West Virginia State Police
17 and the Federal Bureau of Investigation to use all records
18 submitted and produced for the purpose of screening the
19 applicant for a license.

20 (b) The results of the state and national criminal history
21 record check may not be released to or by a private entity except:

22 (1) To the individual who is the subject of the criminal
23 history record check;

24 (2) With the written authorization of the individual who is
25 the subject of the criminal history record check; or

26 (3) Pursuant to a court order.

27 (c) The criminal history record check and related records are
28 not public records for the purposes of chapter twenty-nine-b of
29 this code.

30 (d) The applicant shall ensure that the criminal history
31 record check is completed as soon as possible after the date of
32 the original application for registration.

33 (e) The applicant shall pay the actual costs of the
34 fingerprinting and criminal history record check.

§30-38A-9. Surety bond requirements and claims.

1 (a) Each applicant shall post and maintain a surety bond with
2 the board. The aggregate liability of the surety bond may not
3 exceed the principal sum of the surety bond.

4 (b) The surety bond shall:

5 (1) Be established by the board through rules;

6 (2) Not exceed \$100,000;

7 (3) Be in the form prescribed by the board;

8 (4) Be issued by an surety company authorized to do
9 business in West Virginia; and

10 (5) Accrue to the state for the benefit of any claimant against
11 the registrant to secure the faithful performance of the
12 registrant's obligations.

13 (c) The board may bring suit on behalf of the party having a
14 claim against the registrant.

15 (d) Consumer claims shall be given priority in recovering
16 from the surety bond.

17 (e) Claimants may make claim under the bond for up to one
18 year after the applicant ceases doing business in West Virginia.

19 (f) An appropriate deposit of cash or security may be
20 accepted by the board in lieu of the required bond, as determined
21 by the board through legislative rule.

§30-38A-10. Fee requirements.

1 The fees assessed by the board, as established by legislative
2 rule, shall include the annual fee for appraisal management
3 companies to be included in the national registry maintained by
4 the Appraisal Subcommittee of the Federal Financial Institutions
5 Examination Council.

§30-38A-11. Controlling person requirements.

1 (a) An appraisal management company shall have a
2 designated controlling person who will ensure compliance with
3 this article and will be the main contact for all communication
4 between the board and the appraisal management company.

5 (b) The controlling person shall:

- 6 (1) Be of good character and reputation;
- 7 (2) Submit to national and state criminal background checks
8 as set out in section eight of this article;
- 9 (3) Never have had a license or certificate to act as an
10 appraiser refused, denied, canceled, revoked or surrendered in
11 this state or any other jurisdiction and not subsequently granted
12 or reinstated;
- 13 (4) Never have been a part of a firm that was permanently or
14 temporarily enjoined by a court of competent jurisdiction from
15 engaging in or continuing any conduct or practice involving
16 appraisals, appraisal management services or operating an
17 appraisal management company; and
- 18 (5) Never have been the subject of an order of the board or
19 any other jurisdiction's appraisal management company
20 regulatory agency that denied or revoked the applicant's or
21 firm's privilege to operate as an appraisal management company.

§30-38A-12. Requirements for removal from an appraiser panel.

- 1 (a) Except within sixty days from the date an appraiser is
2 first added to the appraiser panel of an appraisal management
3 company, an appraisal management company may only remove
4 an appraiser from an appraiser panel or refuse to assign
5 appraisals to an appraiser after providing the appraiser twenty
6 days prior written notice stating the reasons for the removal or
7 refusal and providing an opportunity for the appraiser to be
8 heard.
- 9 (b) An appraiser who is removed from an appraiser panel or
10 refused appraisal assignments for an alleged act or omission that
11 would constitute grounds for disciplinary action under the
12 provisions of section twelve, article thirty-eight of this chapter,
13 a violation of the USPAP or a violation of state law or legislative

14 rule may file a complaint with the board for a review of the
15 appraisal management company's decision.

16 (c) The board's review under this subsection is limited to
17 determining whether:

18 (1) The appraisal management company has complied with
19 subsection (a) of this section; and

20 (2) The appraiser has engaged in an act or omission that
21 would constitute grounds for disciplinary action under the
22 provisions of section twelve, article thirty-eight of this code, or
23 has committed a violation of the USPAP or a violation of state
24 law or legislative rule.

25 (d) The board shall hold a hearing on the complaint within
26 a reasonable time, not exceeding six months after the complaint
27 was filed unless there are extenuating circumstances that are
28 noted in the board's minutes.

29 (e) If the board determines after the hearing that an appraisal
30 management company acted improperly then the board shall
31 order the appraisal management company to restore the appraiser
32 to the appraiser panel or assign appraisals to the appraiser.

33 (f) After the board's order, an appraisal management
34 company may not:

35 (1) Reduce the number of appraisals given to the appraiser;
36 or

37 (2) Penalize the appraiser in any other manner.

§30-38A-13. Duties of appraisal management companies.

1 (a) Each appraisal management company shall:

2 (1) Verify that an appraiser receiving work or being placed
3 on an appraiser panel is:

- 4 (A) Professionally and geographically competent;
- 5 (B) Competent to perform the appraisal service being
6 assigned to the appraiser;
- 7 (C) Licensed or certified under the provisions of article
8 thirty-eight of this chapter; and
- 9 (D) In good standing in this state;
- 10 (2) Designate a controlling person responsible for ensuring
11 compliance with this article, including filing with the board the
12 following:
- 13 (A) The name of the controlling person;
- 14 (B) The contact information for the controlling person;
- 15 (C) A verified acceptance of responsibility from the
16 controlling person; and
- 17 (D) An updated registration form identifying the current
18 controlling person submitted within ten business days, when
19 there is a change of the controlling person;
- 20 (3) Maintain complete detailed records of requests for
21 appraisals from clients, including:
- 22 (A) The type of appraisal requested;
- 23 (B) The name and license or certification number of the
24 appraiser to whom the appraisal was referred;
- 25 (C) The fees received from the client; and
- 26 (D) The fees paid to the appraiser or any third party for
27 services performed;

28 (4) Ensure that appraisal services are provided in an
29 independent manner, free from inappropriate influence and
30 coercion, as required by appraisal independence standards
31 established under Section 129E of the Truth in Lending Act and
32 the rules and regulations issued pursuant to the Act, including
33 the requirement that fee appraisers be compensated at a
34 customary and reasonable rate when the appraisal management
35 company is providing services for a consumer credit transaction
36 secured by the principal dwelling of a consumer;

37 (5) Except in cases of breach of contract or substandard
38 performance, pay an independent appraiser for the completion of
39 an appraisal within forty-five days after the appraiser provides
40 the completed appraisal to the appraisal management company,
41 unless otherwise agreed to by the parties;

42 (6) Disclose its registration number on all engagement
43 documentation with appraisers;

44 (7) Disclose to its clients the fees paid:

45 (A) For appraisal management services; and

46 (B) To the appraiser for the completion of an appraisal
47 assignment;

48 (8) Inform the board, when it has a reasonable basis to
49 believe, that an appraiser has:

50 (A) Failed to comply with USPAP and the failure to comply
51 is likely to significantly affect the opinion of value;

52 (B) Violated applicable laws or rules; or

53 (C) Engaged in unethical or unprofessional conduct;

54 (9) Keep all records, including, but not limited to, appraisals
55 ordered by the appraisal management company, for a minimum

56 of five years after an appraisal is completed or two years after
57 final disposition of a judicial proceeding related to the
58 assignment, whichever period expires later; and

59 (10) Maintain a registered agent for service of process and
60 provide the board with the same information for the agent that is
61 provided to the Secretary of State.

62 (b) The board may inspect the records of appraisal
63 management companies at any time without prior notice.

64 (c) A sole proprietor of an appraisal management company
65 is considered the controlling person.

66 (d) If information on a disclosure becomes inaccurate for
67 any reason, then a revised or amended disclosure shall be
68 provided within five business days after the change. The revised
69 or amended disclosure shall be clearly marked as revised or
70 amended and contain sufficient information for the client to
71 identify the original disclosure referenced.

72 (e) The provisions of this section do not exempt a registrant
73 from any other reporting requirements contained in any federal
74 or state law.

§30-38A-14. Unprofessional conduct.

1 An appraisal management company commits unprofessional
2 conduct if it:

3 (1) Requires an appraiser to modify an aspect of an appraisal
4 which modification is not related to substandard performance or
5 noncompliance with the terms of a contract or agreement;

6 (2) Requires an appraiser to prepare an appraisal when the
7 appraiser believes, in his or her own professional judgment and
8 notifies the appraisal management company in a timely manner,

9 that the appraiser does not have the necessary expertise for the
10 specific geographic area or is otherwise not competent to
11 perform the appraisal;

12 (3) Requires an appraiser to prepare an appraisal under a
13 certain time frame that the appraiser believes, in his or her own
14 professional judgment and notifies the appraisal management
15 company in a timely manner, that the appraiser does not have the
16 necessary time to meet all the necessary and relevant legal and
17 professional obligations;

18 (4) Prohibits or inhibits communication between an
19 appraiser and any other person from whom the appraiser, in the
20 appraiser's own professional judgment, believes information
21 would be relevant;

22 (5) Requests an appraiser to do anything that does not
23 comply with:

24 (A) The USPAP; or

25 (B) The requests of the client; or

26 (6) Makes any portion of the appraiser's fee or the appraisal
27 management company's fee contingent on a favorable outcome,
28 including:

29 (A) A loan closing; or

30 (B) An appraisal for a specific dollar amount.

§30-38A-15. Prohibited acts.

1 (a) An appraisal management company or any person acting
2 for an appraisal management company as a controlling person,
3 owner, director, officer, agent, employee or independent
4 contractor may not:

5 (1) Improperly influence or attempt to improperly influence
6 the development, reporting, result or review of an appraisal
7 through:

8 (A) Intimidation, inducement, coercion, extortion, collusion,
9 bribery, compensation, blackmail, threat of exclusion from
10 future appraisal work or any other means that unduly influences
11 or pressures the appraiser;

12 (B) Withholding payment to an appraiser or compensating
13 the appraiser at less than the customary and reasonable rate for
14 appraisal services unless for breach of contract; or

15 (C) Expressly or impliedly promise future business,
16 promotions or increased compensation to an appraiser;

17 (2) Knowingly employ a person to a position of
18 responsibility who has had a license or certificate to act as an
19 appraiser refused, denied, canceled, revoked or surrendered in
20 this state or any other jurisdiction, and not subsequently granted
21 or reinstated;

22 (3) Knowingly enter into a contract with a person for the
23 performance of appraisal services who has had a license or
24 certificate to act as an appraiser refused, denied, canceled,
25 revoked or surrendered in this state or any other jurisdiction, and
26 not subsequently granted or reinstated;

27 (4) Knowingly enter into a contract, agreement or other
28 business relationship for the purpose of obtaining real estate
29 appraisal services with a firm that employs or contracts with a
30 person who has had a license or certificate to act as an appraiser
31 refused, denied, canceled, revoked or surrendered in this state or
32 any other jurisdiction, and not subsequently granted or
33 reinstated;

- 34 (5) Knowingly fail to separate and disclose any fees charged
35 to a client by the appraisal management company for an
36 appraisal by an appraiser from fees charged to a client by the
37 appraisal management company for appraisal management
38 services;
- 39 (6) Prohibit an appraiser from stating, in a submitted
40 appraisal, the fee paid by the appraisal management company to
41 the appraiser for the appraisal;
- 42 (7) Request, allow or require an appraiser to collect any
43 portion of the fee, including the appraisal fee, charged by the
44 appraisal management company to the client;
- 45 (8) Require an appraiser to provide the registrant with the
46 appraiser's signature or seal in any form;
- 47 (9) Alter, amend or change an appraisal submitted by an
48 appraiser;
- 49 (10) Remove an appraiser's signature or seal from an
50 appraisal;
- 51 (11) Add information to or remove information from an
52 appraisal with the intent to change the conclusion of the
53 appraisal;
- 54 (12) Remove an appraiser from an appraiser panel without
55 twenty days prior written notice to the appraiser and an
56 opportunity for the appraiser to be heard;
- 57 (13) Enter into an agreement or contract for the performance
58 of appraisal services with an appraiser who is not in good
59 standing with the board;
- 60 (14) Request or require an appraiser to provide an estimated,
61 predetermined or desired valuation in an appraisal;

62 (15) Request or require an appraiser to provide estimated
63 values or comparable sales at any time prior to the appraiser
64 completing an appraisal;

65 (16) Condition a request for an appraisal or the payment of
66 an appraisal fee on:

67 (A) An opinion, conclusion or valuation reached; or

68 (B) A preliminary estimate or opinion requested from an
69 appraiser;

70 (17) Provide to an appraiser an anticipated, estimated,
71 encouraged or desired value for an appraisal or a proposed or
72 targeted amount to be loaned or borrowed, except that a copy of
73 the sales contract for the purchase transaction may be provided;

74 (18) Require an appraiser to indemnify or hold harmless an
75 appraisal management company for any liability, damage, losses
76 or claims arising out of the services provided by the appraisal
77 management company;

78 (19) Have a direct or indirect interest, financial or otherwise,
79 in the property or transaction involving the appraisal;

80 (20) Provide to an appraiser or a person related to the
81 appraiser stock or other financial or nonfinancial benefits;

82 (21) Obtain, use or pay for a second or subsequent appraisal
83 or order an automated valuation model, unless:

84 (A) There is a reasonable basis to believe that the initial
85 appraisal was flawed and the basis is clearly and appropriately
86 noted in the file;

87 (B) The second or subsequent appraisal, or automated
88 valuation model is done under a bona fide prefunding or post-
89 funding appraisal review or quality control process;

- 90 (C) The second appraisal is required by law; or
- 91 (D) The second or subsequent appraisal or automated
92 valuation model is ordered by a client; or
- 93 (22) Commit an act or practice that impairs or attempts to
94 impair an appraiser's independence, objectivity or impartiality.
- 95 (b) This section does not prohibit an appraisal management
96 company from requesting that an appraiser:
- 97 (1) Provide additional information about the basis for a
98 valuation;
- 99 (2) Correct objective factual errors in an appraisal;
- 100 (3) Provide further detail, substantiation or explanation for
101 the appraiser's conclusion; or
- 102 (4) Consider additional appropriate property information,
103 including the consideration of additional comparable properties
104 to make or support an appraisal.

§30-38A-16. Disciplinary action.

- 1 The board may deny, revoke or refuse to issue or renew the
2 registration of an appraisal management company or may restrict
3 or limit the activities of an appraisal management company or of
4 a person or firm that owns an interest in or participates in the
5 business of an appraisal management company for the following
6 reasons:
- 7 (1) A person or firm acted as an appraisal management
8 company or performed appraisal management services without
9 being properly registered with the board;
- 10 (2) A person or firm did not perform the duties set out in this
11 article;

12 (3) A person or firm engaged in unprofessional conduct as
13 set out in this article;

14 (4) A person or firm engaged in a prohibited act set out in
15 this article;

16 (5) The application for registration contained false or
17 misleading information;

18 (6) A person or firm fraudulently or deceptively obtains or
19 attempts to obtain a registration;

20 (7) A person or firm fraudulently or deceptively used a
21 registration;

22 (8) A person or firm violated the provisions of this article,
23 this code, or the board's rules;

24 (9) A person or firm was found guilty of a felony or pleaded
25 guilty or nolo contendere to a felony;

26 (10) Within the past ten years, a person or firm was found
27 guilty of or pleaded guilty or nolo contendere to a misdemeanor
28 involving:

29 (A) Mortgage lending;

30 (B) Appraisals;

31 (C) Breach of trust; or

32 (D) Fraudulent or dishonest dealing;

33 (11) A person or firm is permanently or temporarily enjoined
34 by a court of competent jurisdiction from engaging in or
35 continuing any conduct or practice involving appraisal
36 management services or operating an appraisal management
37 company;

38 (12) A person or firm is the subject of an order of the board
39 or any other jurisdiction's appraisal management company
40 regulatory agency that denied, revoked or restricted a person's
41 or firm's privilege to operate as an appraisal management
42 company;

43 (13) A person or firm failed to pay the applicable fees; or

44 (14) For any other finding by the board.

§30-38A-17. Notice and hearing procedures.

1 (a) The board, on its own motion or upon receipt of a written
2 complaint, may investigate an appraisal management company,
3 a person or firm associated with an appraisal management
4 company, and a person or firm performing appraisal
5 management services.

6 (b) If the board determines after the investigation there are
7 grounds for disciplinary action, the board may hold a hearing
8 after giving thirty days' prior notice.

9 (c) The board has the same powers set out in article thirty-
10 eight of this chapter.

11 (d) After notice and a hearing, the board may:

12 (1) Deny, revoke or refuse to issue or renew the registration
13 of an appraisal management company or restrict or limit the
14 activities of an appraisal management company or of a person or
15 firm that owns an interest in or participates in the business of an
16 appraisal management company;

17 (2) Impose a fine not to exceed \$25,000 for each violation;
18 or

19 (3) Take other disciplinary action as established by the board
20 by rule.

- 21 (e) The board may seek injunctive relief in the Kanawha
22 County Circuit Court to prevent a person or firm from violating
23 the provisions of this article or the rules promulgated hereunder.
24 The circuit court may grant a temporary or permanent injunction.

CHAPTER 157

**(Com. Sub. for H. B. 2497 - By Delegates Skaff, Stowers,
E. Nelson, D. Campbell, Sobonya, White, Ferns,
Craig, Morgan, Poore and Marcum)**

[Passed April 12, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §30-40-11 of the Code of West Virginia, 1931, as amended, relating to application for a real estate license; requiring applicants for real estate licensure to undergo criminal history record checks; declaring the criminal history record check requirement is not against public policy; requiring applicants to submit fingerprints for the criminal history record check; requiring applicants to authorize the use of fingerprints to conduct the criminal history record check; prohibiting the release of criminal history records except in certain limited circumstances; declaring that criminal history records are not subject to the Freedom of Information Act; requiring the applicant to pay the actual costs of the criminal history record check; requiring the commission to promulgate a legislative rule to make the procedures and requirements consistent with federal standards before implementing the requirement for criminal history record checks; and requiring the commission to issue a license without requiring a criminal history record check to an attorney in good standing.

Be it enacted by the Legislature of West Virginia:

That §30-40-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.

§30-40-11. Application for license.

1 The commission shall only issue an original license to an
2 applicant if he or she:

3 (a) Submits an application, in writing, in a form prescribed
4 by the commission which must contain, but is not limited to:

5 (1) The applicant's social security number;

6 (2) The recommendation of at least two persons who:

7 (A) Are property owners at the time of signing the
8 application;

9 (B) Have been property owners for at least twelve months
10 preceding the signing of the application;

11 (C) Have known the applicant for at least two years;

12 (D) Are not related to the applicant;

13 (E) Are not affiliated with the applicant as an employer,
14 partner or associate or with the broker that will employ the
15 applicant;

16 (F) Believe the applicant bears a good reputation for
17 honesty, trustworthiness and fair dealing; and

18 (G) Believe the applicant is competent to transact the
19 business of a real estate broker, associate broker or salesperson,

20 as the case may be, in a manner that would protect the interest of
21 the public.

22 (3) A clear record indicating all jurisdictions where the
23 applicant holds or has held any professional license.

24 (4) A clear record indicating if the applicant has been
25 convicted of any criminal offense or if there is any criminal
26 charge pending against the applicant, or a member or officer of
27 the brokerage business, at the time of application.

28 (b) Is at least eighteen years of age.

29 (c) Is a high school graduate or the holder of an equivalency
30 diploma.

31 (d) Is trustworthy, of good moral character and competent to
32 transact the business of a broker, associate broker or salesperson.

33 (e) Has paid the appropriate fee, if any, which must
34 accompany all applications for original license or renewal.

35 (f) Has submitted to a state and national criminal history
36 record check, as set forth in this subsection: *Provided*, That an
37 applicant for a license who is an attorney at law may submit a
38 letter of good standing from the Clerk of the Supreme Court of
39 Appeals of West Virginia in lieu of submitting to a state and
40 national criminal history record check.

41 (1) This requirement is found not to be against public policy.

42 (2) The criminal history record check shall be based on
43 fingerprints submitted to the West Virginia State Police or its
44 assigned agent for forwarding to the Federal Bureau of
45 Investigation.

46 (3) The applicant shall meet all requirements necessary to
47 accomplish the state and national criminal history record check,
48 including:

49 (A) Submitting fingerprints for the purposes set forth in this
50 subsection; and

51 (B) Authorizing the commission, the West Virginia State
52 Police and the Federal Bureau of Investigation to use all records
53 submitted and produced for the purpose of screening the
54 applicant for a license.

55 (4) The results of the state and national criminal history
56 record check may not be released to or by a private entity except:

57 (A) To the individual who is the subject of the criminal
58 history record check;

59 (B) With the written authorization of the individual who is
60 the subject of the criminal history record check; or

61 (C) Pursuant to a court order.

62 (5) The criminal history record check and related records are
63 not public records for the purposes of chapter twenty-nine-b of
64 this code.

65 (6) The applicant shall pay the actual costs of the
66 fingerprinting and criminal history record check.

67 (7) Before implementing the provisions of this subsection,
68 the commission shall propose rules for legislative approval in
69 accordance with article three, chapter twenty-nine-a of this code.
70 The rules shall set forth the requirements and procedures for the
71 criminal history check and must be consistent with standards
72 established by the Federal Bureau of Investigation and the
73 National Crime Prevention and Privacy Compact as authorized
74 by 42 U. S. C. A. §14611, *et seq.*

CHAPTER 158

**(S. B. 383 - By Senators Cookman, Stollings,
Plymale and Palumbo)**

[Passed April 8, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 18, 2013.]

AN ACT to amend and reenact §29-21-9 and §29-21-20 of the Code of West Virginia, 1931, as amended, all relating to Public Defender Services; authorizing family court judges to appoint counsel in contempt cases when jail commitment is possible; and providing immunity to attorney appointed by family court judges.

Be it enacted by the Legislature of West Virginia:

That §29-21-9 and §29-21-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-9. Panel attorneys.

1 (a) In each circuit of the state, the circuit court shall establish
2 and maintain regional and local panels of private attorneys-at-
3 law who are available to serve as counsel for eligible clients. An
4 attorney-at-law may become a panel attorney and be enrolled on
5 the regional or local panel, or both, to serve as counsel for
6 eligible clients by informing the court. An agreement to accept
7 cases generally or certain types of cases particularly may not
8 prevent a panel attorney from declining an appointment in a
9 specific case.

10 (b) In all cases where an attorney-at-law is required to be
11 appointed for an eligible client, the appointment shall be made

12 by the circuit judge: *Provided*, That in family court contempt
13 cases, the family court judge shall appoint an attorney-at-law
14 when required, in the following order of preference:

15 (1) In circuits where a public defender office is in operation,
16 the judge shall appoint the public defender office unless an
17 appointment is not appropriate due to a conflict of interest or
18 unless the public defender corporation board of directors or the
19 public defender, with the approval of the board, has notified the
20 court that the existing caseload cannot be increased without
21 jeopardizing the ability of defenders to provide effective
22 representation;

23 (2) If the public defender office is not available for
24 appointment, the court shall appoint one or more panel attorneys
25 from the local panel;

26 (3) If there is no local panel attorney available, the judge
27 shall appoint one or more panel attorneys from the regional
28 panel;

29 (4) If there is no regional panel attorney available, the judge
30 may appoint a public defender office from an adjoining circuit
31 if such public defender office agrees to the appointment;

32 (5) If the adjoining public defender office does not accept
33 the appointment, the judge may appoint a panel attorney from an
34 adjoining circuit; or

35 (6) If a panel attorney from an adjoining circuit is
36 unavailable, the judge may appoint a panel attorney from any
37 circuit.

38 (c) In any given case, the appointing judge may alter the
39 order in which attorneys are appointed if the case requires
40 particular knowledge or experience on the part of the attorney to
41 be appointed: *Provided*, That any time a court, in appointing

42 counsel pursuant to the provisions of this section, alters the order
43 of appointment as set forth herein, the order of appointment shall
44 contain the court's reasons for doing so.

§29-21-20. Appointed counsel immune from liability.

1 Any attorney who provides legal representation under the
2 provisions of this article under appointment by a circuit court,
3 family court or by the Supreme Court of Appeals, and whose
4 only compensation therefor is paid under the provisions of this
5 article, shall be immune from liability arising from that
6 representation in the same manner and to the same extent that
7 prosecuting attorneys are immune from liability.

CHAPTER 159

(S. B. 458 - By Senators Prezioso and Tucker)

[Passed April 9, 2013; in effect from passage.]

[Approved by the Governor on April 16, 2013.]

AN ACT to amend and reenact §5-16-3 of the Code of West Virginia, 1931, as amended, relating to health benefit plans; permitting the Director of the Public Employees Insurance Agency to operate the Medicare retiree health benefits plans on a calendar year; requiring certain conditions; and providing that financial plans shall continue to be on a fiscal-year basis.

Be it enacted by the Legislature of West Virginia:

That §5-16-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES
INSURANCE ACT.**

**§5-16-3. Composition of Public Employees Insurance Agency;
appointment, qualification, compensation and duties
of director of agency; employees; civil service
coverage.**

1 (a) The Public Employees Insurance Agency consists of the
2 director, the Finance Board, the Advisory Board and any
3 employees who may be authorized by law. The director shall be
4 appointed by the Governor, with the advice and consent of the
5 Senate, and serves at the will and pleasure of the Governor. The
6 director shall have at least three years' experience in health or
7 governmental health benefit administration as his or her primary
8 employment duty prior to appointment as director. The director
9 shall receive actual expenses incurred in the performance of
10 official business. The director shall employ any administrative,
11 technical and clerical employees required for the proper
12 administration of the programs provided in this article. The
13 director shall perform the duties that are required of him or her
14 under the provisions of this article and is the Chief
15 Administrative Officer of the Public Employees Insurance
16 Agency. The director may employ a deputy director.

17 (b) Except for the director, his or her personal secretary, the
18 deputy director and the chief financial officer, all positions in the
19 agency shall be included in the classified service of the civil
20 service system pursuant to article six, chapter twenty-nine of this
21 code.

22 (c) The director is responsible for the administration and
23 management of the Public Employees Insurance Agency as
24 provided in this article and in connection with his or her
25 responsibility may make all rules necessary to effectuate the
26 provisions of this article. Nothing in section four or five of this

27 article limits the director's ability to manage on a day-to-day
28 basis the group insurance plans required or authorized by this
29 article, including, but not limited to, administrative contracting,
30 studies, analyses and audits, eligibility determinations,
31 utilization management provisions and incentives, provider
32 negotiations, provider contracting and payment, designation of
33 covered and noncovered services, offering of additional coverage
34 options or cost containment incentives, pursuit of coordination
35 of benefits and subrogation or any other actions which would
36 serve to implement the plan or plans designed by the Finance
37 Board. The director is to function as a benefits management
38 professional and should avoid political involvement in managing
39 the affairs of the Public Employees Insurance Agency.

40 (d) The director may, if it is financially advantageous to the
41 state, operate the Medicare retiree health benefit plan offered by
42 the agency based on a plan year that runs concurrent with the
43 calendar year. Financial plans as addressed in section five of this
44 article shall continue to be on a fiscal-year basis.

45 (e) The director should make every effort to evaluate and
46 administer programs to improve quality, improve health status
47 of members, develop innovative payment methodologies,
48 manage health care delivery costs, evaluate effective benefit
49 designs, evaluate cost sharing and benefit-based programs and
50 adopt effective industry programs that can manage the long-term
51 effectiveness and costs for the programs at the Public Employees
52 Insurance Agency to include, but not be limited to:

53 (1) Increasing generic fill rates;

54 (2) Managing specialty pharmacy costs;

55 (3) Implementing and evaluating medical home models and
56 health care delivery;

57 (4) Coordinating with providers, private insurance carriers
58 and to the extent possible Medicare to encourage the
59 establishment of cost-effective accountable care organizations;

60 (5) Exploring and developing advanced payment
61 methodologies for care delivery such as case rates, capitation
62 and other potential risk-sharing models and partial risk-sharing
63 models for accountable care organizations and/or medical
64 homes;

65 (6) Adopting measures identified by the Centers for
66 Medicare and Medicaid Services to reduce cost and enhance
67 quality;

68 (7) Evaluating the expenditures to reduce excessive use of
69 emergency room visits, imaging services and other drivers of the
70 agency's medical rate of inflation;

71 (8) Recommending cutting-edge benefit designs to the
72 Finance Board to drive behavior and control costs for the plans;

73 (9) Implementing programs to encourage the use of the most
74 efficient and high-quality providers by employees and retired
75 employees;

76 (10) Identifying employees and retired employees who have
77 multiple chronic illnesses and initiating programs to coordinate
78 the care of these patients;

79 (11) Initiating steps by the agency to adjust payment by the
80 agency for the treatment of hospital acquired infections and
81 related events consistent with the payment policies, operational
82 guidelines and implementation timetable established by the
83 Centers of Medicare and Medicaid Services. The agency shall
84 protect employees and retired employees from any adjustment in
85 payment for hospital acquired infections; and

86 (12) Initiating steps by the agency to reduce the number of
87 employees and retired employees who experience avoidable
88 readmissions to a hospital for the same diagnosis related group
89 illness within thirty days of being discharged by a hospital in this
90 state or another state consistent with the payment policies,
91 operational guidelines and implementation timetable established
92 by the Centers of Medicare and Medicaid Services.

93 (f) The director shall issue an annual progress report to the
94 Joint Committee on Government and Finance on the
95 implementation of any reforms initiated pursuant to this section
96 and other initiatives developed by the agency .

CHAPTER 160

**(Com. Sub. for H. B. 2471 - By Mr. Speaker (Mr. Thompson)
and Delegates Boggs, Swartzmiller, Miley,
Young, Sponaugle and Barrett)**

[Passed April 11, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §15-5-6 and §15-5-19a of the Code of West Virginia, 1931, as amended, all relating to exercise of restricted state and local authority during a declared state of emergency; possession of firearms during a declared state of emergency; prohibiting the restriction or otherwise lawful possession, use, carrying, transfer, transportation, storage or display of a firearm or ammunition during a declared state of emergency; clarifying scope of right to seize or confiscate otherwise lawfully-possessioned firearm during a declared state of emergency; providing exceptions thereto; providing a remedy at

law and equity for a violations of this article for the improper seizure of firearms or ammunition during a declared state of emergency; providing a cause of action for the return of the ammunition and firearms seized in violation of these proscriptions; establishing a venue for actions; and providing for the award of costs and attorney fees to a prevailing plaintiff.

Be it enacted by the Legislature of West Virginia:

That §15-5-6 and §15-5-19a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-6. Emergency powers of Governor.

1 The provisions of this section shall be operative only during
2 the existence of a state of emergency. The existence of a state of
3 emergency may be proclaimed by the Governor or by concurrent
4 resolution of the Legislature if the Governor in such
5 proclamation, or the Legislature in such resolution, finds that an
6 attack upon the United States has occurred or is anticipated in
7 the immediate future, or that a natural or man-made disaster of
8 major proportions has actually occurred or is imminent within
9 the state, and that the safety and welfare of the inhabitants of this
10 state require an invocation of the provisions of this section. Any
11 such emergency, whether proclaimed by the Governor or by the
12 Legislature, shall terminate upon the proclamation of the
13 termination thereof by the Governor, or the passage by the
14 Legislature of a concurrent resolution terminating such
15 emergency.

16 So long as such state of emergency exists, the Governor shall
17 have and may exercise the following additional emergency
18 powers:

19 (a) To enforce all laws and rules relating to the provision of
20 emergency services and to assume direct operational control of
21 any or all emergency service forces and helpers in the state;

22 (b) To sell, lend, lease, give, transfer or deliver materials or
23 perform functions relating to emergency services on such terms
24 and conditions as he or she shall prescribe and without regard to
25 the limitations of any existing law and to account to the State
26 Treasurer for any funds received for such property;

27 (c) To procure materials and facilities for emergency
28 services by purchase, condemnation under the provisions of
29 chapter fifty-four of this code or seizure pending institution of
30 condemnation proceedings within thirty days from the seizing
31 thereof and to construct, lease, transport, store, maintain,
32 renovate or distribute such materials and facilities.
33 Compensation for property so procured shall be made in the
34 manner provided in chapter fifty-four of this code;

35 (d) To obtain the services of necessary personnel, required
36 during the emergency, and to compensate them for their services
37 from his or her contingent funds or such other funds as may be
38 available to him or her;

39 (e) To provide and compel the evacuation of all or part of the
40 population from any stricken or threatened area within the state
41 and to take such steps as are necessary for the receipt and care of
42 such evacuees;

43 (f) To control ingress and egress to and from a disaster area,
44 the movement of persons within the area and the occupancy of
45 premises therein;

46 (g) To suspend the provisions of any regulatory statute
47 prescribing the procedures for conduct of state business or the
48 orders, rules or regulations of any state agency, if strict

49 compliance therewith would in any way prevent, hinder or delay
50 necessary action in coping with the emergency;

51 (h) To utilize such available resources of the state and of its
52 political subdivisions as are reasonably necessary to cope with
53 the emergency;

54 (i) To suspend or limit the sale, dispensing or transportation
55 of alcoholic beverages, explosives and combustibles;

56 (j) To make provision for the availability and use of
57 temporary emergency housing; and

58 (k) To perform and exercise such other functions, powers
59 and duties as are necessary to promote and secure the safety and
60 protection of the civilian population.

61 No powers granted under this section may be interpreted to
62 authorize any action that would violate the prohibitions of
63 section nineteen-a of this article.

**§15-5-19a. Possession of firearms during a declared state of
emergency.**

1 (a) No person acting on behalf or under the authority of the
2 state or a political subdivision of the state may do any of the
3 following during any federal or state declared state of
4 emergency:

5 (1) Prohibit or restrict the otherwise lawful possession, use,
6 carrying, transfer, transportation, storage or display of a firearm
7 or ammunition;

8 (2) Seize, confiscate, or authorize the seizure or confiscation
9 of any otherwise lawfully-possessed firearm or ammunition
10 unless:

11 (A) The person acting on behalf of or under the authority of
12 the state or political subdivision is:

13 (i) Defending himself or another from an assault; or

14 (ii) Arresting a person in actual possession of a firearm or
15 ammunition for a violation of law; or

16 (B) The firearm or ammunition is being seized or
17 confiscated as evidence of a crime; or

18 (3) Require registration of any firearm or ammunition.

19 (b) The prohibitions of subsection (a)(1) do not prohibit the
20 state or an authorized state or local authority from ordering and
21 enforcing an evacuation or general closure of businesses in the
22 affected area during a declared state of emergency.

23 (c) Any individual aggrieved by a violation of this section
24 may seek relief in an action at law or in equity for redress against
25 any person who subjects such individual, or causes such
26 individual to be subjected, to an action prohibited by this section.

27 (d) In addition to any other remedy at law or in equity, an
28 individual aggrieved by the seizure or confiscation of a firearm
29 or ammunition in violation of this section may bring an action
30 for the return of such firearm or ammunition in the circuit court
31 of the county in which that individual resides or in which such
32 firearm or ammunition is located.

33 (e) In any action or proceeding to enforce this section, the
34 court shall award a prevailing plaintiff costs and reasonable
35 attorney fees.

CHAPTER 161

**(Com. Sub. for S. B. 371 - By Senators Kessler, Mr. President
and M. Hall)
[By Request of the Executive]**

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact §25-1-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §28-5-27 of said code; to amend said code by adding thereto two new sections, designated §31-20-5g and §31-20-5h; to amend and reenact §61-7-6 of said code; to amend and reenact §62-11A-1a of said code; to amend and reenact §62-11B-9 of said code; to amend and reenact §62-11C-2, §62-11C-3 and §62-11C-6 of said code; to amend said code by adding thereto a new section, designated §62-11C-10; to amend and reenact §62-12-6, §62-12-7, §62-12-9, §62-12-10, §62-12-13, §62-12-14a, §62-12-15, §62-12-17 and §62-12-19 of said code; to amend said code by adding thereto a new section, designated §62-12-29; to amend and reenact §62-15-2 and §62-15-4 of said code; and to amend said code by adding thereto two new sections, designated §62-15-6a and §62-15-6b, all relating to public safety; requiring the Division of Corrections to perform graduated methods of mental health screens, appraisals and evaluations on persons committed to its custody; eliminating requirement for separate disciplinary rules at each institution; mandating one year of supervised release for violent inmates and deducting one year of their good time; authorizing judges to require up to one hundred eighty days of a nonviolent offender's sentence to be served as post-release mandatory supervision; setting an effective date for supervised release provisions; requiring the Commissioner of Corrections to adopt policies regarding mandatory supervised release; requiring the West Virginia Regional Jail and Correctional

Facility Authority to use a standardized pretrial risk-screening instrument adopted by the Supreme Court of Appeals of West Virginia to screen persons arrested and placed in a regional jail; providing for the confidentiality of risk assessments and their inadmissibility at criminal and civil trials; requiring the Division of Corrections to develop and implement a cognitive behavioral program for inmates in regional jails committed to the custody of the Commissioner of Corrections and requiring the Division of Corrections to pay its cost; exempting parole officers from prohibitions against carrying concealed weapons; moving definition of "day report center" to section relating to conditions of release on probation; providing standards and limitations under which judges and magistrates may impose a period of supervision or participation in day report program; clarifying language regarding confinement and revocation for violations of the conditions of home incarceration; adding representative of the Bureau for Behavioral Health and Health Facilities to the Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency and Correction; requiring that the Community Corrections Subcommittee review, assess and report on the implementation of evidence-based practices in the criminal justice system; adding member with a background in substance abuse treatment and services to the community criminal justice boards to be appointed by the commission or commissions of the county or counties represented by the board; providing oversight responsibility to Division of Justice and Community Services to implement standardized risk and needs assessment, evaluate effectiveness of other modifications to community corrections programs and provide annual report; requiring probation officers to conduct a standardized risk and needs assessment for individuals placed on probation and to supervise probationer and enforce probation according to assessment and supervision standards adopted by the West Virginia Supreme Court of Appeals; requiring probation officers to perform random drug and alcohol tests of persons under their supervision; authorizing

the Supreme Court of Appeals of West Virginia to adopt a standardized risk and needs assessment for use by probation officers; authorizing the Supreme Court of Appeals of West Virginia to adopt a standardized pretrial screening instrument for use by the Regional Jail Authority; providing standards and limitations under which judges may impose a term of reporting to a day report center as a condition of probation; authorizing day report center programs to provide services based on the results of a person's standardized risk and needs assessment; providing for graduated sanctions in response to violations of the conditions of release on probation other than absconding, committing certain new criminal conduct or violating special condition of probation; creating exceptions to new criminal conduct provisions; making standardized risk and needs assessments confidential court documents; requiring copies of graduated sanctions confinement orders be supplied to the Commissioner of Corrections; providing that graduated sanctions confinement be paid by the Division of Corrections; providing that judges may depart from graduated sanctions limitations upon specific written findings; revising eligibility requirements for accelerated parole program; providing that parole applications may be considered by the Parole Board without prior submission a home plan; requiring that Division of Corrections' policies and procedures for developing a rehabilitation treatment plan include the use of substance abuse assessment tools and prioritize treatment resources based on the risk and needs assessment and substance abuse assessment results; providing for rebuttable presumption that parole is appropriate for inmates completing the accelerated parole program and a rehabilitation treatment program; providing standards and limitations for Parole Board; outlining duties of the Division of Corrections to supervise, treat and provide support services for persons released on mandatory supervised release; removing temporal standard for requirement that the Parole Board have access to a copy of an inmate's physical, mental or psychiatric examination; clarifying the Parole Board's duty to notify

prosecuting attorneys of an offender's release on parole; authorizing Division of Corrections to employ directors of housing and employment for released inmates with duties relating to the reduction of parole release delays and finding employment; requiring parole officers to update the standardized risk and needs assessment for each person for whom an assessment has not been conducted for parole and to supervise each person according to the assessment and the commissioner's supervision standards; authorizing the Commissioner of Corrections to issue a certificate authorizing an eligible parole officer to carry firearms or concealed weapons; providing standards and limitations under which the Division of Corrections may order substance abuse treatment or impose a term of reporting to a day report center or other community corrections program as a condition or modification of parole; authorizing the Commissioner of Corrections to enter into a master agreement with the Division of Justice and Community Services to reimburse counties for use of the community corrections programs; clarifying that parolee participation in community corrections is at program director's discretion; providing for graduated sanctions in response to violations of the conditions of release on parole other than absconding, certain new criminal conduct or violating a special condition of parole; providing a parolee with the right to a hearing, upon request, regarding whether he or she violated the conditions of his or her release on parole; providing the authority for the Parole Board to depart from graduated sanction; providing that graduated sanctions incarceration for parolees be paid for by Division of Corrections; providing for a Community Supervision Committee to be appointed by the Administrative Director of the Supreme Court of Appeals of West Virginia to coordinate the sharing of information for community supervision and requiring an annual report; revising definitions for Drug Offender Accountability and Treatment Act; requiring all judicial circuits to participate in a drug court or regional drug court program by July 1, 2016; providing standards and limitations under which judges may order treatment

supervision for drug offenders; providing that a judge may order a period of confinement to encourage compliance with treatment supervision to be paid by the Division of Corrections for up to thirty days for each instance; requiring the Division of Justice and Community Services to use appropriated funds to implement substance abuse treatment to serve those under treatment supervision in each judicial circuit; providing that the Division of Justice and Community Services in consultation with the Governor's Advisory Committee on Substance Abuse is responsible for developing standards relating to quality and delivery of substance abuse services; requiring certain education and training; paying for drug abuse assessments and certified drug treatment from appropriated funds; requiring submittal of an annual report and specifying an effective date; outlining duties of treatment supervision service providers; providing effective dates for provisions related to treatment supervision; providing for state payment of drug court participants' incarceration under certain circumstances; defining terms; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That §25-1-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §28-5-27 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §31-20-5g and §31-20-5h; that §61-7-6 of said code be amended and reenacted; that §62-11A-1a of said code be amended and reenacted; that §62-11B-9 of said code be amended and reenacted; that §62-11C-2, §62-11C-3 and §62-11C-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §62-11C-10; that §62-12-6, §62-12-7, §62-12-9, §62-12-10, §62-12-13, §62-12-14a, §62-12-15, §62-12-17 and §62-12-19 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §62-12-29; that §62-15-2 and §62-15-4 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §62-15-6a and §62-15-6b, all to read as follows:

CHAPTER 25. DIVISION OF CORRECTIONS.**ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.****§25-1-15. Diagnostic and classification divisions.**

1 (a) The Commissioner of Corrections may establish
2 diagnostic and classification divisions.

3 (b) Notwithstanding any provision of this code to the
4 contrary, all persons committed to the custody of the
5 Commissioner of the Division of Corrections for presentence
6 diagnosis and classification and all persons sentenced to the
7 custody of the Division of Corrections shall, upon transfer to the
8 Division of Corrections, undergo diagnosis and classification,
9 which shall include: (1) Assessments of a person's criminogenic
10 risk and need factors that are reliable, validated and normed for
11 a specific population and responsive to cultural and
12 gender-specific needs as well as individual learning styles and
13 temperament; (2) application of a mental health preliminary
14 screen; and (3) if the mental health preliminary screen suggests
15 the need for further assessment, a full psychological evaluation.
16 The Division of Corrections shall perform mental health
17 preliminary screens, appraisals and evaluations according to
18 standards provided by the American Correctional Association.

**CHAPTER 28. STATE CORRECTIONAL
AND PENAL INSTITUTIONS.****ARTICLE 5. THE PENITENTIARY.****§28-5-27. Deduction from sentence for good conduct; mandatory supervision.**

1 (a) All current and future adult inmates in the custody of the
2 Commissioner of Corrections, except those committed pursuant

3 to article four, chapter twenty-five of this code, shall be granted
4 commutation from their sentences for good conduct in
5 accordance with this section.

6 (b) The commutation of sentence, known as "good time",
7 shall be deducted from the maximum term of indeterminate
8 sentences or from the fixed term of determinate sentences.

9 (c) Each inmate committed to the custody of the
10 Commissioner of Corrections and incarcerated in a correctional
11 facility pursuant to that commitment shall be granted one day
12 good time for each day he or she is incarcerated, including any
13 and all days in jail awaiting sentence which are credited by the
14 sentencing court to his or her sentence pursuant to section
15 twenty-four, article eleven, chapter sixty-one of this code or for
16 any other reason relating to the commitment. An inmate may not
17 be granted any good time for time served either on parole or
18 bond or in any other status when he or she is not physically
19 incarcerated.

20 (d) An inmate sentenced to serve a life sentence is not
21 eligible to earn or receive any good time pursuant to this section.

22 (e) An inmate under two or more consecutive sentences shall
23 be allowed good time as if the several sentences, when the
24 maximum terms of the consecutive sentences are added together,
25 were all one sentence.

26 (f) The Commissioner of Corrections shall promulgate
27 disciplinary rules. The rules shall describe acts that inmates are
28 prohibited from committing, procedures for charging individual
29 inmates for violation of the rules and for determining the guilt or
30 innocence of inmates charged with the violations and the
31 sanctions which may be imposed for the violations. A copy of
32 the rules shall be given to each inmate. For each violation, by a
33 sanctioned inmate, any part or all of the good time which has

34 been granted to the inmate pursuant to this section may be
35 forfeited and revoked by the warden or superintendent of the
36 institution in which the violation occurred. The warden or
37 superintendent, when appropriate and with approval of the
38 commissioner, may restore any forfeited good time.

39 (g) Each inmate, upon his or her commitment to and being
40 placed into the custody of the Commissioner of Corrections, or
41 upon his or her return to custody as the result of violation of
42 parole pursuant to section nineteen, article twelve, chapter
43 sixty-two of this code, shall be given a statement setting forth the
44 term or length of his or her sentence or sentences and the time of
45 his or her minimum discharge computed according to this
46 section.

47 (h) Each inmate shall be given a revision of the statement
48 described in subsection (g) of this section if and when any part
49 or all of the good time has been forfeited and revoked or restored
50 pursuant to subsection (f) of this section, by which the time of
51 his or her earliest discharge is changed.

52 (i) The Commissioner of Corrections may, with the approval
53 of the Governor, allow extra good time for inmates who perform
54 exceptional work or service.

55 (j) In order to ensure equitable good time for all current and
56 future inmates in the custody of the Commissioner of
57 Corrections, except as to those persons committed pursuant to
58 article four, chapter twenty-five of this code, all good time shall
59 be computed according to this section and all previous
60 computations of good time under prior statutes or rules are void.
61 All inmates who have previously forfeited good time are hereby
62 restored to good time computed according to this section and all
63 inmates will receive a new discharge date computed according
64 to this section. All inmates that have been awarded overtime
65 good time or extra good time pursuant to sections

66 twenty-seven-a and twenty-seven-b of this article which were
67 repealed simultaneously with the amendment to this section
68 during the regular session of the Legislature in the year 1984
69 shall receive that good time in addition to the good time
70 computed according to this section.

71 (k) There shall be no grants or accumulations of good time
72 or credit to any current or future inmate serving a sentence in the
73 custody of the Division of Corrections except in the manner
74 provided in this section.

75 (l) Prior to the calculated discharge date of an inmate serving
76 a sentence for a felony crime of violence against the person, a
77 felony offense where the victim was a minor child or a felony
78 offense involving the use of a firearm, one year shall be
79 deducted from the inmate's accumulated good time to provide
80 for one year of mandatory post-release supervision following the
81 first instance in which the inmate reaches his or her calculated
82 discharge date. All inmates released pursuant to this subsection
83 shall be subject to electronic or GPS monitoring for the entire
84 period of supervision. The provisions of this subsection are
85 applicable to offenses committed on or after July 1, 2013.

86 (m) Upon sentencing of an inmate for an offense not
87 referenced in subsection (l) of this section, the court may order
88 that one hundred eighty days of the sentence, or some lesser
89 period, be served through post-release mandatory supervision if
90 the court determines supervision is appropriate and in the best
91 interest of justice, rehabilitation and public safety. All inmates
92 released pursuant to this subsection shall be subject to electronic
93 or GPS monitoring for the entire period of supervision. The
94 provisions of this subsection are applicable to offenses
95 committed on or after July 1, 2013.

96 (n) The Commissioner of Corrections shall adopt policies
97 and procedures to implement the mandatory supervision

98 provided for in subsections (l) and (m) of this section, which
99 may include terms, conditions and procedures for supervision,
100 modification and violation applicable to persons on parole.

101 (o) As used in this section, "felony crime of violence against
102 the person" means felony offenses set forth in article two,
103 three-e, eight-b or eight-d, chapter sixty-one of this code, and the
104 felony offenses of arson and burglary of a residence where an
105 individual is physically located at the time of the offense as set
106 forth in article three, chapter sixty-one of this code.

107 (p) As used in this section, "felony offense where the victim
108 was a minor child" means any felony crime of violence against
109 the person and any felony offense set forth in article eight,
110 eight-a, eight-c or eight-d, chapter sixty-one of this code.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-5g. Pretrial risk assessment.

1 (a) Within three calender days of the arrest and placement of
2 any person in a regional jail, the authority shall conduct a pretrial
3 risk assessment using a standardized risk assessment instrument
4 approved and adopted by the Supreme Court of Appeals of West
5 Virginia. The results of all standardized risk and needs
6 assessments are confidential and shall only be provided to the
7 court, court personnel, the prosecuting attorney, defense counsel
8 and the person who is the subject of the pretrial risk assessment.
9 Upon completion of the assessment, the authority shall provide
10 it to the magistrate and circuit clerks for delivery to the
11 appropriate circuit judge or magistrate.

12 (b) The pretrial risk assessment and all oral or written
13 statements made by an individual during risk assessment shall be
14 inadmissable evidence at any criminal or civil trial.

§31-20-5h. Programs for inmates committed to prison.

1 The Division of Corrections may develop and implement a
2 cognitive behavioral program to address the needs of inmates
3 detained in a regional jail, but committed to the custody of the
4 Commissioner of Corrections. The program shall be developed
5 in consultation with the Regional Jail Authority, and may be
6 offered by video teleconference or webinar technology. The
7 costs of the program shall be paid out of funds appropriated to
8 the Division of Corrections. The program shall be covered by the
9 rehabilitation plan policies and procedures adopted by the
10 Division of Corrections under subsection (h), section thirteen,
11 article twelve, chapter sixty-two of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**ARTICLE 7. DANGEROUS WEAPONS.****§61-7-6. Exceptions as to prohibitions against carrying concealed handguns; exemptions from licensing fees.**

1 (a) The licensure provisions set forth in this article do not
2 apply to:

3 (1) Any person:

4 (A) Carrying a deadly weapon upon his or her own premises;

5 (B) Carrying a firearm, unloaded, from the place of purchase
6 to his or her home, residence or place of business or to a place of
7 repair and back to his or her home, residence or place of
8 business; or

9 (C) Possessing a firearm while hunting in a lawful manner
10 or while traveling from his or her home, residence or place of
11 business to a hunting site and returning to his or her home,
12 residence or place of business;

13 (2) Any person who is a member of a properly organized
14 target-shooting club authorized by law to obtain firearms by
15 purchase or requisition from this state or from the United States
16 for the purpose of target practice from carrying any pistol, as
17 defined in this article, unloaded, from his or her home, residence
18 or place of business to a place of target practice and from any
19 place of target practice back to his or her home, residence or
20 place of business, for using any such weapon at a place of target
21 practice in training and improving his or her skill in the use of
22 the weapons;

23 (3) Any law-enforcement officer or law-enforcement official
24 as defined in section one, article twenty-nine, chapter thirty of
25 this code;

26 (4) Any employee of the West Virginia Division of
27 Corrections duly appointed pursuant to the provisions of section
28 eleven-c, article one, chapter twenty-five of this code while the
29 employee is on duty;

30 (5) Any member of the armed forces of the United States or
31 the militia of this state while the member is on duty;

32 (6) Any resident of another state who holds a valid permit or
33 license to possess or carry a handgun issued by a state or a
34 political subdivision subject to the provisions and limitations set
35 forth in section six-a of this article;

36 (7) Any federal law-enforcement officer or federal police
37 officer authorized to carry a weapon in the performance of the
38 officer's duty;

39 (8) Any Hatfield-McCoy Regional Recreation Authority
40 Ranger while the ranger is on duty; and

41 (9) Any parole officer appointed pursuant to section
42 fourteen, article twelve, chapter sixty-two of this code in the
43 performance of their duties.

44 (b) On and after July 1, 2013, the following judicial officers
45 and prosecutors and staff shall be exempted from paying any
46 application fees or licensure fees required under this article.
47 However, on and after that same date, they shall be required to
48 make application and satisfy all licensure and handgun safety
49 and training requirements set forth in section four of this article
50 before carrying a concealed handgun in this state:

51 (1) Any justice of the Supreme Court of Appeals of West
52 Virginia;

53 (2) Any circuit judge;

54 (3) Any retired justice or retired circuit judge designated
55 senior status by the Supreme Court of Appeals of West Virginia;

56 (4) Any family court judge;

57 (5) Any magistrate;

58 (6) Any prosecuting attorney;

59 (7) Any assistant prosecuting attorney; or

60 (8) Any duly appointed investigator employed by a
61 prosecuting attorney.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

§62-11A-1a. Other sentencing alternatives.

1 (a) Any person who has been convicted in a circuit court or
2 in a magistrate court under any criminal provision of this code
3 of a misdemeanor or felony, which is punishable by imposition
4 of a fine or confinement in a regional jail or a state correctional

5 institution, or both fine and confinement, may, in the discretion
6 of the sentencing judge or magistrate, as an alternative to the
7 sentence imposed by statute for the crime, be sentenced under
8 one of the following programs:

9 (1) The weekend jail program under which a person would
10 be required to spend weekends or other days normally off from
11 work in jail;

12 (2) The work program under which a sentenced person
13 would be required to spend the first two or more days of his or
14 her sentence in jail and then, in the discretion of the court, would
15 be assigned to a county agency to perform labor within the jail,
16 or in and upon the buildings, grounds, institutions, bridges and
17 roads, including orphaned roads used by the general public and
18 public works within the county. Eight hours of labor are to be
19 credited as one day of the sentence imposed. A person sentenced
20 under this program may be required to provide his or her own
21 transportation to and from the work site, lunch and work clothes;
22 or

23 (3) The community service program under which a
24 sentenced person would spend no time in jail, but would be
25 sentenced to a number of hours or days of community service
26 work with government entities or charitable or nonprofit entities
27 approved by the circuit court. Regarding any portion of the
28 sentence designated as confinement, eight hours of community
29 service work is to be credited as one day of the sentence
30 imposed. Regarding any portion of the sentence designated as a
31 fine, the fine is to be credited at an hourly rate equal to the
32 prevailing federal minimum wage at the time the sentence was
33 imposed. In the discretion of the court, the sentence credits may
34 run concurrently or consecutively. A person sentenced under this
35 program may be required to provide his or her own
36 transportation to and from the work site, lunch and work clothes.

37 (b) In no event may the duration of the alternate sentence
38 exceed the maximum period of incarceration otherwise allowed.

39 (c) In imposing a sentence under the provisions of this
40 section, the court shall first make the following findings of fact
41 and incorporate them into the court's sentencing order:

42 (1) The person sentenced was not convicted of an offense for
43 which a mandatory period of confinement is imposed by statute;

44 (2) In circuit court cases, that the person sentenced is not a
45 habitual criminal within the meaning of sections eighteen and
46 nineteen, article eleven, chapter sixty-one of this code;

47 (3) In circuit court cases, that the offense underlying the
48 sentence is not a felony offense for which violence or the threat
49 of violence to the person is an element of the offense;

50 (4) In circuit court cases, that adequate facilities for the
51 administration and supervision of alternative sentencing
52 programs are available through the court's probation officers or
53 the county sheriff or, in magistrate court cases, that adequate
54 facilities for the administration and supervision of alternative
55 sentencing programs are available through the county sheriff;
56 and

57 (5) That an alternative sentence under provisions of this
58 article will best serve the interests of justice.

59 (d) A person sentenced by the circuit court under the
60 provisions of this article remains under the administrative
61 custody and supervision of the court's probation officers or the
62 county sheriff. A person sentenced by a magistrate remains
63 under the administrative custody and supervision of the county
64 sheriff.

65 (e) A person sentenced under the provisions of this section
66 may be required to pay the costs of his or her incarceration,

67 including meal costs: *Provided*, That the judge or magistrate
68 considers the person's ability to pay the costs.

69 (f) A person sentenced under the provisions of this section
70 remains under the jurisdiction of the court. The court may
71 withdraw any alternative sentence at any time by order entered
72 with or without notice and require that the remainder of the
73 sentence be served in the county jail, a regional jail or a state
74 correctional facility: *Provided*, That no alternative sentence
75 directed by the sentencing judge or magistrate or administered
76 under the supervision of the sheriff, his or her deputies, a jailer
77 or a guard may require the convicted person to perform duties
78 which would be considered detrimental to the convicted person's
79 health as attested to by a physician.

80 (g) No provision of this section may be construed to limit a
81 circuit judge's ability to impose a period of supervision or
82 participation in a community corrections program created
83 pursuant to article eleven-c, chapter sixty-two of this code,
84 except that a person sentenced to a day report center must be
85 identified as moderate to high risk of reoffending and moderate
86 to high criminogenic need, as defined by the standardized risk
87 and needs assessment adopted by the Supreme Court of Appeals
88 of West Virginia under subsection (d), section six, article twelve
89 of this chapter, and applied by a probation officer or day report
90 staff: *Provided*, That a judge may impose a period of supervision
91 or participation in a day report center, notwithstanding the
92 results of the standardized risk and needs assessment, upon
93 making specific written findings of fact as to the reason for
94 departing from the requirements of this section.

95 (h) Magistrates may only impose a period of participation in
96 a day report center with the consent by general administrative
97 order of the supervising judge or chief judge of the judicial
98 circuit in which he or she presides. The day report center staff
99 shall determine which services a person receives based on the
100 results of the standardized risk and needs assessment adopted by

101 the Supreme Court of Appeals of West Virginia under subsection
102 (d), section six, article twelve of this chapter, along with any
103 other conditions of supervision set by the court.

ARTICLE 11B. HOME INCARCERATION ACT.

§62-11B-9. Violation of order of home incarceration procedures; penalties.

1 (a) If, at any time during the period of home incarceration,
2 there is reasonable cause to believe that a participant in a home
3 incarceration program has violated the terms and conditions of
4 the circuit court's home incarceration order, he or she is subject
5 to the procedures and penalties set forth in section ten, article
6 twelve of this chapter.

7 (b) If, at any time during the period of home incarceration,
8 there is reasonable cause to believe that a participant sentenced
9 to home incarceration by the circuit court has violated the terms
10 and conditions of the court's order of home incarceration and the
11 participant's participation was imposed as an alternative
12 sentence to another form of incarceration, the participant is
13 subject to the same procedures involving confinement and
14 revocation as would a probationer charged with a violation of the
15 order of home incarceration. Any participant under an order of
16 home incarceration is subject to the same penalty or penalties,
17 upon the circuit court's finding of a violation of the order of
18 home incarceration, as he or she could have received at the
19 initial disposition hearing: *Provided*, That the participant shall
20 receive credit towards any sentence imposed after a finding of
21 violation for the time spent in home incarceration.

22 (c) If, at any time during the period of home incarceration,
23 there is reasonable cause to believe that a participant sentenced
24 to home incarceration by a magistrate has violated the terms and
25 conditions of the magistrate's order of home incarceration as an
26 alternative sentence to incarceration in jail, the supervising
27 authority may arrest the participant upon the obtaining of an

28 order or warrant and take the offender before a magistrate within
29 the county of the offense. The magistrate shall then conduct a
30 prompt and summary hearing on whether the participant's home
31 incarceration should be revoked. If it appears to the satisfaction
32 of the magistrate that any condition of home incarceration has
33 been violated, the magistrate may revoke the home incarceration
34 and order that the sentence of incarceration in jail be executed.
35 Any participant under an order of home incarceration is subject
36 to the same penalty or penalties, upon the magistrate's finding of
37 a violation of the order of home incarceration, as the participant
38 could have received at the initial disposition hearing: *Provided*,
39 That the participant shall receive credit towards any sentence
40 imposed after a finding of violation for the time spent in home
41 incarceration.

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

§62-11C-2. Community Corrections Subcommittee.

1 (a) A Community Corrections Subcommittee of the
2 Governor's Committee on Crime, Delinquency and Correction
3 is continued and continues to be assigned responsibility for
4 screening community corrections programs submitted by
5 community criminal justice boards or from other entities
6 authorized by the provisions of this article to do so for approval
7 for funding by the Governor's committee and for making
8 recommendations as to the disbursement of funds for approved
9 community corrections programs. The subcommittee shall be
10 comprised of fifteen members of the Governor's committee
11 including: A representative of the Division of Corrections, a
12 representative of the Regional Jail and Correctional Facility
13 Authority, a representative of the Bureau for Behavioral Health
14 and Health Facilities, a person representing the interests of
15 victims of crime, an attorney employed by a public defender
16 corporation, an attorney who practices criminal law, a prosecutor
17 and a representative of the West Virginia Coalition Against

18 Domestic Violence. At the discretion of the West Virginia
19 Supreme Court of Appeals, the Administrator of the Supreme
20 Court of Appeals, a probation officer and a circuit judge may
21 serve on the subcommittee as ex officio, nonvoting members.

22 (b) The subcommittee shall elect a chairperson and a vice
23 chairperson. The subcommittee shall meet quarterly. Special
24 meetings may be held upon the call of the chairperson, vice
25 chairperson or a majority of the members of the subcommittee.
26 A majority of the members of the subcommittee constitutes a
27 quorum.

**§62-11C-3. Duties of the Governor's committee and the
community corrections subcommittee.**

1 (a) Upon recommendation of the Community Corrections
2 Subcommittee, the Governor's committee shall propose for
3 legislative promulgation in accordance with the provisions of
4 article three, chapter twenty-nine-a of this code, emergency and
5 legislative rules to:

6 (1) Establish standards for approval of community
7 corrections programs submitted by community criminal justice
8 boards or other entities authorized by the provisions of this
9 article to do so;

10 (2) Establish minimum standards for community corrections
11 programs to be funded, including requiring annual program
12 evaluations;

13 (3) Make any necessary adjustments to the fees established
14 in section four of this article;

15 (4) Establish reporting requirements for community
16 corrections programs; and

17 (5) Carry out the purpose and intent of this article.

18 (b) Upon recommendation of the community corrections
19 subcommittee, the Governor's committee shall:

20 (1) Maintain records of community corrections programs
21 including the corresponding community criminal justice board
22 or other entity contact information and annual program
23 evaluations, when available;

24 (2) Seek funding for approved community corrections
25 programs from sources other than the fees collected pursuant to
26 section four of this article; and

27 (3) Provide funding for approved community corrections
28 programs, as available.

29 (c) The Governor's committee shall submit, on or before
30 September 30 of each year, to the Governor, the Speaker of the
31 House of Delegates, the President of the Senate and, upon
32 request, to any individual member of the Legislature a report on
33 its activities during the previous year and an accounting of funds
34 paid into and disbursed from the special revenue account
35 established pursuant to section four of this article.

36 (d) The subcommittee shall review the implementation of
37 evidence-based practices and conduct regular assessments for
38 quality assurance of all community-based criminal justice
39 services, including day report centers, probation, parole and
40 home confinement. In consultation with the affected agencies,
41 the subcommittee shall establish a process for reviewing
42 performance. The process shall include review of agency
43 performance measures and identification of new measures by the
44 subcommittee, if necessary, for measuring the implementation
45 of evidence-based practices or for quality assurance. After
46 providing an opportunity for the affected agencies to comment,
47 the subcommittee shall submit, on or before September 30 of
48 each year, to the Governor, the Speaker of the House of

49 Delegates, the President of the Senate and, upon request, to any
50 individual member of the Legislature a report on its activities
51 and results from assessments of performance during the previous
52 year.

§62-11C-6. Community criminal justice boards.

1 (a) Each county or combination of counties or a county or
2 counties and a Class I or II municipality that seek to establish
3 community-based corrections services shall establish a
4 community criminal justice board: *Provided*. That if a county
5 has not established a community criminal justice board by July
6 1, 2002, the chief probation officer of that county, with the
7 approval of the chief judge of the circuit, may apply for and
8 receive approval and funding from the Governor's committee for
9 any programs as authorized by the provisions of section five of
10 this article. Any county which chooses to operate without a
11 community criminal justice board is subject to the regulations
12 and requirements established by the community corrections
13 subcommittee and the Governor's committee.

14 (b) A community criminal justice board shall consist of no
15 more than fifteen voting members.

16 (c) All members of a community criminal justice board shall
17 be residents of the county or counties represented.

18 (d) A community criminal justice board shall consist of the
19 following members:

20 (1) The sheriff or chief of police or, if the board represents
21 more than one county or municipality, at least one sheriff or
22 chief of police from the counties represented;

23 (2) The prosecutor or, if the board represents more than one
24 county, at least one prosecutor from the counties represented;

25 (3) If a public defender corporation exists in the county or
26 counties represented, at least one attorney employed by any
27 public defender corporation existing in the counties represented
28 or, if no public defender office exists, one criminal defense
29 attorney from the counties represented;

30 (4) One member to be appointed by the local board of
31 education or, if the board represents more than one county, at
32 least one member appointed by a board of education of the
33 counties represented;

34 (5) One member with a background in mental health care
35 and services to be appointed by the commission or commissions
36 of the county or counties represented by the board;

37 (6) Two members who can represent organizations or
38 programs advocating for the rights of victims of crimes with
39 preference given to organizations or programs advocating for the
40 rights of victims of the crimes of domestic violence or driving
41 under the influence;

42 (7) One member with a background in substance abuse
43 treatment and services to be appointed by the commission or
44 commissions of the county or counties represented by the board;
45 and

46 (8) Three at-large members to be appointed by the
47 commission or commissions of the county or counties
48 represented by the board.

49 (e) At the discretion of the West Virginia Supreme Court of
50 Appeals, any or all of the following people may serve on a
51 community criminal justice board as ex officio, nonvoting
52 members:

53 (1) A circuit judge from the county or counties represented;

54 (2) A magistrate from the county or counties represented; or

55 (3) A probation officer from the county or counties
56 represented.

57 (f) Community criminal justice boards may:

58 (1) Provide for the purchase, development and operation of
59 community corrections services;

60 (2) Coordinate with local probation departments in
61 establishing and modifying programs and services for offenders;

62 (3) Evaluate and monitor community corrections programs,
63 services and facilities to determine their impact on offenders;
64 and

65 (4) Develop and apply for approval of community
66 corrections programs by the Governor's Committee on Crime,
67 Delinquency and Correction.

68 (g) If a community criminal justice board represents more
69 than one county, the appointed membership of the board,
70 excluding any ex officio members, shall include an equal
71 number of members from each county, unless the county
72 commission of each county agrees in writing otherwise.

73 (h) If a community criminal justice board represents more
74 than one county, the board shall, in consultation with the county
75 commission of each county represented, designate one county
76 commission as the fiscal agent of the board.

77 (i) Any political subdivision of this state operating a
78 community corrections program shall, regardless of whether or
79 not the program has been approved by the Governor's
80 Committee on Crime, Delinquency and Correction, provide to
81 the Governor's committee required information regarding the
82 program's operations as required by legislative rule.

§62-11C-10. Standardized risk and needs assessment; annual reviews; day report services.

1 The Division of Justice and Community Services shall:

2 (1) Require that staff of day reporting centers and other
3 community corrections programs be trained in and use in each
4 case a standardized risk and needs assessment as adopted by the
5 Supreme Court of Appeals of West Virginia. The results of all
6 standardized risk and needs assessments are confidential;

7 (2) Annually conduct a validation study of inter-rater
8 reliability and risk cut-off scores by population to ensure that the
9 standardized risk and needs assessment is sufficiently predictive
10 of the risk of reoffending;

11 (3) Annually review the membership of all community
12 criminal justice boards to ensure appropriate membership;

13 (4) Evaluate the services, sanctions and programs provided
14 by each community corrections program to ensure that they
15 address criminogenic needs and are evidence based;

16 (5) Encourage community criminal justice boards to develop
17 programs in addition to or in lieu of day report centers through
18 grants and more focused use of day report services; and

19 (6) Annually report to the Community Corrections
20 Subcommittee on the results of duties required by this section.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-6. Powers and duties of probation officers.

1 (a) Each probation officer shall:

2 (1) Investigate all cases which the court refers to the officer
3 for investigation and shall report in writing on each case;

4 (2) Conduct a standardized risk and needs assessment, using
5 the instrument adopted by the Supreme Court of Appeals of
6 West Virginia, for any probationer for whom an assessment has
7 not been conducted either prior to placement on probation or by
8 a specialized assessment officer. The results of all standardized
9 risk and needs assessments are confidential;

10 (3) Supervise the probationer and enforce probation
11 according to assessment and supervision standards adopted by
12 the Supreme Court of Appeals of West Virginia;

13 (4) Furnish to each person released on probation under the
14 officer's supervision a written statement of the probationer's
15 conditions of probation together with a copy of the rules
16 prescribed by the Supreme Court of Appeals of West Virginia;

17 (5) Stay informed concerning the conduct and condition of
18 each probationer under the officer's supervision and report on
19 the conduct and condition of each probationer in writing as often
20 as the court requires;

21 (6) Use all practicable and suitable methods to aid and
22 encourage the probationer to improve his or her conduct and
23 condition;

24 (7) Perform random drug and alcohol testing on probationers
25 under his or her supervision as directed by the circuit court;

26 (8) Maintain detailed work records; and

27 (9) Perform any other duties the court requires.

28 (b) The probation officer may, with or without an order or
29 warrant, arrest any probationer as provided in section ten of this
30 article, and arrest any person on supervised release when there
31 is reasonable cause to believe that the person on supervised
32 release has violated a condition of release. A person on
33 supervised release who is arrested shall be brought before the
34 court for a prompt and summary hearing.

35 (c) Notwithstanding any provision of this code to the
36 contrary:

37 (1) Any probation officer appointed on or after July 1, 2002,
38 may carry handguns in the course of the officer's official duties
39 after meeting specialized qualifications established by the
40 Governor's Committee on Crime, Delinquency and Correction.
41 The qualifications shall include the successful completion of
42 handgun training, which is comparable to the handgun training
43 provided to law-enforcement officers by the West Virginia State
44 Police and includes a minimum of 'four hours' training in
45 handgun safety.

46 (2) Probation officers may only carry handguns in the course
47 of their official duties after meeting the specialized
48 qualifications set forth in subdivision (1) of this subsection.

49 (3) Nothing in this subsection includes probation officers
50 within the meaning of law-enforcement officers as defined in
51 section one, article twenty-nine, chapter thirty of this code.

52 (d) The Supreme Court of Appeals of West Virginia may
53 adopt a standardized risk and needs assessment with risk cut-off
54 scores for use by probation officers, taking into consideration the
55 assessment instrument adopted by the Division of Corrections
56 under subsection (h), section thirteen of this article and the
57 responsibility of the Division of Justice and Community Services
58 to evaluate the use of the standardized risk and needs
59 assessment. The results of any standardized risk and needs
60 assessment are confidential.

**§62-12-7. Pretrial and preliminary investigation; report on
prospective probationers.**

1 (a) The Supreme Court of Appeals of West Virginia may
2 adopt a standardized pretrial risk assessment for use by the
3 Regional Jail Authority to assist magistrates and circuit courts in
4 making pretrial decisions under article one-c of this chapter.

5 (b) Unless otherwise directed by the court, the probation
6 officer shall, in the form adopted by the Supreme Court of
7 Appeals of West Virginia, make a careful investigation of, and
8 a written report with recommendations concerning, any
9 prospective probationer. Insofar as practicable, this report shall
10 include information concerning the offender's court and criminal
11 record, occupation, family background, education, habits and
12 associations, mental and physical condition, the names,
13 relationship, ages and condition of those dependent upon him or
14 her for support and any other facts that may aid the court in
15 determining the propriety and conditions of his or her release on
16 probation. A person convicted of a felony or of any offense
17 described in article eight-b or eight-d, chapter sixty-one of this
18 code against a minor child may not be released on probation
19 until this report has been presented to and considered by the
20 court. The court may request a report concerning any person
21 convicted of a misdemeanor. The presentence report of any
22 person convicted of an offense, described in said articles or
23 section twelve, article eight of said chapter, may include a
24 statement from a therapist, psychologist or physician who is
25 providing treatment to the child. A copy of all reports shall be
26 filed with the Parole Board.

§62-12-9. Conditions of release on probation.

- 1 (a) Release on probation is conditioned upon the following:
- 2 (1) That the probationer may not, during the term of his or
3 her probation, violate any criminal law of this or any other state
4 or of the United States;
- 5 (2) That the probationer may not, during the term of his or
6 her probation, leave the state without the consent of the court
7 which placed him or her on probation;
- 8 (3) That the probationer complies with the conditions
9 prescribed by the court for his or her supervision by the
10 probation officer;

11 (4) That in every case in which the probationer has been
12 convicted of an offense defined in section twelve, article eight,
13 chapter sixty-one of this code or article eight-b or eight-d of said
14 chapter, against a child, the probationer may not live in the same
15 residence as any minor child, nor exercise visitation with any
16 minor child and may have no contact with the victim of the
17 offense: *Provided*, That the probationer may petition the court of
18 the circuit in which he or she was convicted for a modification
19 of this term and condition of his or her probation and the burden
20 rests upon the probationer to demonstrate that a modification is
21 in the best interest of the child;

22 (5) That the probationer pay a fee, not to exceed \$20 per
23 month, to defray costs of supervision: *Provided*, That the court
24 conducts a hearing prior to imposition of probation and makes a
25 determination on the record that the offender is able to pay the
26 fee without undue hardship. All moneys collected as fees from
27 probationers pursuant to this subdivision shall be deposited with
28 the circuit clerk who shall, on a monthly basis, remit the moneys
29 collected to the State Treasurer for deposit in the State General
30 Revenue Fund; and

31 (6) That the probationer is required to pay the fee described
32 in section four, article eleven-c of this chapter: *Provided*, That
33 the court conducts a hearing prior to imposition of probation and
34 makes a determination on the record that the offender is able to
35 pay the fee without undue hardship.

36 (b) In addition, the court may impose, subject to
37 modification at any time, any other conditions which it may
38 determine advisable, including, but not limited to, any of the
39 following:

40 (1) That the probationer make restitution or reparation, in
41 whole or in part, immediately or within the period of probation,
42 to any party injured by the crime for which he or she has been
43 convicted: *Provided*, That the court conducts a hearing prior to

44 imposition of probation and makes a determination on the record
45 that the offender is able to pay restitution without undue
46 hardship;

47 (2) That the probationer pays any fine assessed and the costs
48 of the proceeding in installments directed by the court: *Provided,*
49 That the court conducts a hearing prior to imposition of
50 probation and makes a determination on the record that the
51 offender is able to pay the costs without undue hardship;

52 (3) That the probationer makes contributions from his or her
53 earnings, in sums directed by the court, for the support of his or
54 her dependents; and

55 (4) That the probationer, in the discretion of the court, is
56 required to serve a period of confinement in jail of the county in
57 which he or she was convicted for a period not to exceed one
58 third of the minimum sentence established by law or one third of
59 the least possible period of confinement in an indeterminate
60 sentence, but in no case may the period of confinement exceed
61 six consecutive months. The court may sentence the defendant
62 within the six-month period to intermittent periods of
63 confinement including, but not limited to, weekends or holidays
64 and may grant to the defendant intermittent periods of release in
65 order that he or she may work at his or her employment or for
66 other reasons or purposes as the court may determine
67 appropriate: *Provided,* That the provisions of article eleven-a of
68 this chapter do not apply to intermittent periods of confinement
69 and release except to the extent directed by the court. If a period
70 of confinement is required as a condition of probation, the court
71 shall make special findings that other conditions of probation are
72 inadequate and that a period of confinement is necessary.

73 (c) Circuit courts may impose, as a condition of probation,
74 participation in a day report center.

75 (1) To be eligible, the probationer must be identified as
76 moderate to high risk of reoffending and moderate to high

77 criminogenic need, as determined by the standardized risk and
78 needs assessment adopted by the Supreme Court of Appeals of
79 West Virginia under subsection (d), section six of this article,
80 and applied by a probation officer or day report staff. In eligible
81 cases, circuit courts may impose a term of up to one year:
82 *Provided, That* notwithstanding the results of the standardized
83 risk and needs assessment, a judge may impose, as a term of
84 probation, participation in a day report center program upon
85 making specific written findings of fact as to the reason for
86 departing from the requirements of this subdivision.

87 (2) The day report center staff shall determine which
88 services a person receives based on the results of the
89 standardized risk and needs assessment and taking into
90 consideration the other conditions of probation set by the court.

91 (d) For the purposes of this article, "day report center"
92 means a court-operated or court-approved facility where persons
93 ordered to serve a sentence in this type of facility are required to
94 report under the terms and conditions set by the court for
95 purposes which include, but are not limited to, counseling,
96 employment training, alcohol or drug testing or other medical
97 testing.

§62-12-10. Violation of probation.

1 (a) If at any time during the period of probation there shall
2 be reasonable cause to believe that the probationer has violated
3 any of the conditions of his or her probation, the probation
4 officer may arrest him or her with or without an order or warrant,
5 or the court which placed him or her on probation, or the judge
6 thereof in vacation, may issue an order for his or her arrest,
7 whereupon he or she shall be brought before the court, or the
8 judge thereof in vacation, for a prompt and summary hearing.

9 (1) If the court or judge finds reasonable cause exists to
10 believe that the probationer:

11 (A) Absconded supervision;

12 (B) Engaged in new criminal conduct other than a minor
13 traffic violation or simple possession of a controlled substance;
14 or

15 (C) Violated a special condition of probation designed either
16 to protect the public or a victim; the court or judge may revoke
17 the suspension of imposition or execution of sentence, impose
18 sentence if none has been imposed and order that sentence be
19 executed.

20 (2) If the judge finds that reasonable cause exists to believe
21 that the probationer violated any condition of supervision other
22 than the conditions of probation set forth in subdivision (1) of
23 this subsection then, for the first violation, the judge shall
24 impose a period of confinement up to sixty days or, for the
25 second violation, a period of confinement up to one hundred
26 twenty days. For the third violation, the judge may revoke the
27 suspension of imposition or execution of sentence, impose
28 sentence if none has been imposed and order that sentence be
29 executed, with credit for time spent in confinement under this
30 section.

31 (3) In computing the period for which the offender is to be
32 confined, the time between his or her release on probation and
33 his or her arrest may not be taken to be any part of the term of
34 his or her sentence.

35 (b) A probationer confined for a first or second violation
36 pursuant to subdivision (2), subsection (a) of this section may be
37 confined in jail, and the costs of confining felony probationers
38 shall be paid out of funds appropriated for the Division of
39 Corrections. Whenever the court orders the incarceration of a
40 probationer pursuant to the provisions of subdivision (2),
41 subsection (a) of this section, a circuit clerk shall provide a copy

42 of the order of confinement within five days to the
43 Commissioner of Corrections.

44 (c) If, despite a violation of the conditions of probation, the
45 court or judge is of the opinion that the interests of justice do not
46 require that the probationer serve his or her sentence or a period
47 of confinement, the judge may, except when the violation was
48 the commission of a felony, again release him or her on
49 probation: *Provided*, That a judge may otherwise depart from the
50 sentence limitations set forth in subdivision (2), subsection (a)
51 of this section upon making specific written findings of fact
52 supporting the basis for the departure.

**§62-12-13. Powers and duties of board; eligibility for parole;
procedure for granting parole.**

1 (a) The Parole Board, whenever it is of the opinion that the
2 best interests of the state and of the inmate will be served, and
3 subject to the limitations provided in this section, shall release
4 any inmate on parole for terms and upon conditions provided by
5 this article.

6 (b) Any inmate of a state correctional institution is eligible
7 for parole if he or she:

8 (1)(A) Has served the minimum term of his or her
9 indeterminate sentence or has served one fourth of his or her
10 definite term sentence, as the case may be; or

11 (B) He or she:

12 (i) Has applied for and been accepted by the Commissioner
13 of Corrections into an accelerated parole program;

14 (ii) Does not have a prior criminal conviction for a felony
15 crime of violence against the person, a felony offense involving
16 the use of a firearm or a felony offense where the victim was a
17 minor child.

18 (iii) Is not serving a sentence for a crime of violence against
19 the person, or more than one felony for a controlled substance
20 offense for which the inmate is serving a consecutive sentence,
21 a felony offense involving the use of a firearm or a felony
22 offense where the victim was a minor child; and

23 (iv) Has successfully completed a rehabilitation treatment
24 program created with the assistance of a standardized risk and
25 needs assessment.

26 (C) Notwithstanding any provision of this code to the
27 contrary, any inmate who committed, or attempted to commit, a
28 felony with the use, presentment or brandishing of a firearm, is
29 not eligible for parole prior to serving a minimum of three years
30 of his or her sentence or the maximum sentence imposed by the
31 court, whichever is less: *Provided*, That any inmate who
32 committed, or attempted to commit, any violation of section
33 twelve, article two, chapter sixty-one of this code, with the use,
34 presentment or brandishing of a firearm, is not eligible for parole
35 prior to serving a minimum of five years of his or her sentence
36 or one third of his or her definite term sentence, whichever is
37 greater. Nothing in this paragraph applies to an accessory before
38 the fact or a principal in the second degree who has been
39 convicted as if he or she were a principal in the first degree if, in
40 the commission of or in the attempted commission of the felony,
41 only the principal in the first degree used, presented or
42 brandished a firearm. An inmate is not ineligible for parole under
43 the provisions of this paragraph because of the commission or
44 attempted commission of a felony with the use, presentment or
45 brandishing of a firearm unless that fact is clearly stated and
46 included in the indictment or presentment by which the person
47 was charged and was either: (i) Found guilty by the court at the
48 time of trial upon a plea of guilty or nolo contendere; (ii) found
49 guilty by the jury, upon submitting to the jury a special
50 interrogatory for such purpose if the matter was tried before a

51 jury; or (iii) found guilty by the court, if the matter was tried by
52 the court without a jury.

53 (D) The amendments to this subsection adopted in the year
54 1981:

55 (i) Apply to all applicable offenses occurring on or after
56 August 1 of that year;

57 (ii) Apply with respect to the contents of any indictment or
58 presentment returned on or after August 1 of that year
59 irrespective of when the offense occurred;

60 (iii) Apply with respect to the submission of a special
61 interrogatory to the jury and the finding to be made thereon in
62 any case submitted to the jury on or after August 1 of that year
63 or to the requisite findings of the court upon a plea of guilty or
64 in any case tried without a jury: *Provided*, That the state gives
65 notice in writing of its intent to seek such finding by the jury or
66 court, as the case may be. The notice shall state with particularity
67 the grounds upon which the finding will be sought as fully as the
68 grounds are otherwise required to be stated in an indictment,
69 unless the grounds upon which the finding will be sought are
70 alleged in the indictment or presentment upon which the matter
71 is being tried; and

72 (iv) Does not apply with respect to cases not affected by the
73 amendments and in those cases the prior provisions of this
74 section apply and are construed without reference to the
75 amendments.

76 (v) Insofar as the amendments relate to mandatory sentences
77 restricting the eligibility for parole, all matters requiring a
78 mandatory sentence shall be proved beyond a reasonable doubt
79 in all cases tried by the jury or the court.

80 (E) As used in this section, “felony crime of violence against
81 the person” means felony offenses set forth in article two,
82 three-e, eight-b or eight-d, chapter sixty-one of this code; and

83 (F) As used in this section, “felony offense where the victim
84 was a minor child” means any felony crime of violence against
85 the person and any felony violation set forth in article eight,
86 eight-a, eight-c or eight-d, chapter sixty-one of this code.

87 (G) For the purpose of this section, the term “firearm” means
88 any instrument which will, or is designed to, or may readily be
89 converted to expel a projectile by the action of an explosive,
90 gunpowder or any other similar means.

91 (2) Is not in punitive segregation or administrative
92 segregation as a result of disciplinary action;

93 (3) Has maintained a record of good conduct in prison for a
94 period of at least three months immediately preceding the date
95 of his or her release on parole;

96 (4) Has prepared and submitted to the Parole Board a written
97 parole release plan setting forth proposed plans for his or her
98 place of residence, employment and, if appropriate, his or her
99 plans regarding education and post-release counseling and
100 treatment: *Provided*, That an inmate’s application for parole may
101 be considered by the board without the prior submission of a
102 home plan, but the inmate shall have a home plan approved by
103 the board prior to his or her release on parole. The
104 Commissioner of Corrections or his or her designee shall review
105 and investigate the plan and provide recommendations to the
106 board as to the suitability of the plan: *Provided*, That in cases in
107 which there is a mandatory thirty-day notification period
108 required prior to the release of the inmate, pursuant to section
109 twenty-three of this article, the board may conduct an initial
110 interview and deny parole without requiring the development of
111 a plan. In the event the board believes parole should be granted,

112 it may defer a final decision pending completion of an
113 investigation and receipt of recommendations. Upon receipt of
114 the plan together with the investigation and recommendation, the
115 board, through a panel, shall make a final decision regarding the
116 granting or denial of parole; and

117 (5) Has satisfied the board that if released on parole he or
118 she will not constitute a danger to the community.

119 (c) Except in the case of an inmate serving a life sentence, a
120 person who has been previously twice convicted of a felony may
121 not be released on parole until he or she has served the minimum
122 term provided by law for the crime for which he or she was
123 convicted. An inmate sentenced for life may not be paroled until
124 he or she has served ten years, and an inmate sentenced for life
125 who has been previously twice convicted of a felony may not be
126 paroled until he or she has served fifteen years: *Provided*, That
127 an inmate convicted of first degree murder for an offense
128 committed on or after June 10, 1994, is not eligible for parole
129 until he or she has served fifteen years.

130 (d) In the case of an inmate sentenced to any state
131 correctional institution, the Parole Board, as soon as that inmate
132 becomes eligible, shall consider the advisability of his or her
133 release on parole.

134 (e) If, upon consideration, parole is denied, the board shall
135 promptly notify the inmate of the denial. The board shall, at the
136 time of denial, notify the inmate of the month and year he or she
137 may apply for reconsideration and review. The board shall at
138 least once a year reconsider and review the case of every inmate
139 who was denied parole and who is still eligible: *Provided*, That
140 the board may reconsider and review parole eligibility any time
141 within three years following the denial of parole of an inmate
142 serving a life sentence with the possibility of parole.

143 (f) Any inmate serving a sentence on a felony conviction
144 who becomes eligible for parole consideration prior to being
145 transferred to a state correctional institution may make written
146 application for parole. The terms and conditions for parole
147 consideration established by this article apply to that inmate.

148 (g) The board shall, with the approval of the Governor, adopt
149 rules governing the procedure in the granting of parole. No
150 provision of this article and none of the rules adopted under this
151 article are intended or may be construed to contravene, limit or
152 otherwise interfere with or affect the authority of the Governor
153 to grant pardons and reprieves, commute sentences, remit fines
154 or otherwise exercise his or her constitutional powers of
155 executive clemency.

156 (h)(1) The Division of Corrections shall promulgate policies
157 and procedures for developing a rehabilitation treatment plan
158 created with the assistance of a standardized risk and needs
159 assessment. The policies and procedures shall provide for, at a
160 minimum, screening and selecting inmates for rehabilitation
161 treatment and development, using standardized risk and needs
162 assessment and substance abuse assessment tools, and
163 prioritizing the use of residential substance abuse treatment
164 resources based on the results of the standardized risk and needs
165 assessment and a substance abuse assessment. The results of all
166 standardized risk and needs assessments and substance abuse
167 assessments are confidential.

168 (2) An inmate shall not be paroled under paragraph (B),
169 subdivision (1), subsection (b) of this section solely due to
170 having successfully completed a rehabilitation treatment plan,
171 but completion of all the requirements of a rehabilitation
172 treatment plan along with compliance with the requirements of
173 subsection (b) of this section creates a rebuttable presumption
174 that parole is appropriate. The presumption created by this
175 subdivision may be rebutted by a Parole Board finding that,

176 according to the standardized risk and needs assessment, at the
177 time parole release is sought the inmate still constitutes a
178 reasonable risk to the safety or property of other persons if
179 released. Nothing in subsection (b) of this section or in this
180 subsection may be construed to create a right to parole.

181 (i) Notwithstanding the provisions of subsection (b) of this
182 section, the Parole Board may grant or deny parole to an inmate
183 against whom a detainer is lodged by a jurisdiction other than
184 West Virginia for service of a sentence of incarceration, upon a
185 written request for parole from the inmate. A denial of parole
186 under this subsection precludes consideration for parole for a
187 period of one year or until the provisions of subsection (b) of this
188 section are applicable.

189 (j) If an inmate is otherwise eligible for parole pursuant to
190 subsection (b) of this section and has completed the
191 rehabilitation treatment program required under subsection (h)
192 of this section, the Parole Board may not require the inmate to
193 participate in an additional program, but may determine that the
194 inmate must complete an assigned task or tasks prior to actual
195 release on parole. The board may grant parole contingently,
196 effective upon successful completion of the assigned task or
197 tasks, without the need for a further hearing.

198 (k) (1) The Division of Corrections shall supervise all
199 probationers and parolees whose supervision may have been
200 undertaken by this state by reason of any interstate compact
201 entered into pursuant to the Uniform Act for Out-of-State
202 Parolee Supervision.

203 (2) The Division of Corrections shall provide supervision,
204 treatment/recovery and support services for all persons released
205 to mandatory supervision under section twenty-seven, article
206 five, chapter twenty-eight of this code.

207 (1)(I) When considering an inmate of a state correctional
208 center for release on parole, the Parole Board panel considering
209 the parole shall have before it an authentic copy of or report on
210 the inmate's current criminal record as provided through the
211 West Virginia State Police, the United States Department of
212 Justice or any other reliable criminal information sources and
213 written reports of the warden or superintendent of the state
214 correctional institution to which the inmate is sentenced:

215 (A) On the inmate's conduct record while in custody,
216 including a detailed statement showing any and all infractions of
217 disciplinary rules by the inmate and the nature and extent of
218 discipline administered for the infractions;

219 (B) On improvement or other changes noted in the inmate's
220 mental and moral condition while in custody, including a
221 statement expressive of the inmate's current attitude toward
222 society in general, toward the judge who sentenced him or her,
223 toward the prosecuting attorney who prosecuted him or her,
224 toward the policeman or other officer who arrested the inmate
225 and toward the crime for which he or she is under sentence and
226 his or her previous criminal record;

227 (C) On the inmate's industrial record while in custody which
228 shall include: The nature of his or her work, occupation or
229 education, the average number of hours per day he or she has
230 been employed or in class while in custody and a
231 recommendation as to the nature and kinds of employment
232 which he or she is best fitted to perform and in which the inmate
233 is most likely to succeed when he or she leaves the state
234 correctional institution; and

235 (D) On any physical, mental, psychological or psychiatric
236 examinations of the inmate.

237 (2) The Parole Board panel considering the parole may
238 waive the requirement of any report when not available or not
239 applicable as to any inmate considered for parole but, in every
240 case, shall enter in its record its reason for the waiver: *Provided*,
241 That in the case of an inmate who is incarcerated because the
242 inmate has been found guilty of, or has pleaded guilty to, a
243 felony under the provisions of section twelve, article eight,
244 chapter sixty-one of this code or under the provisions of article
245 eight-b or eight-c of said chapter, the Parole Board panel may
246 not waive the report required by this subsection. The report shall
247 include a study and diagnosis of the inmate, including an
248 on-going treatment plan requiring active participation in sexual
249 abuse counseling at an approved mental health facility or
250 through some other approved program: *Provided, however*, That
251 nothing disclosed by the inmate during the study or diagnosis
252 may be made available to any law-enforcement agency, or other
253 party without that inmate's consent, or admissible in any court
254 of this state, unless the information disclosed indicates the
255 intention or plans of the parolee to do harm to any person,
256 animal, institution or to property. Progress reports of outpatient
257 treatment are to be made at least every six months to the parole
258 officer supervising the parolee. In addition, in such cases, the
259 Parole Board shall inform the prosecuting attorney of the county
260 in which the person was convicted of the parole hearing and
261 shall request that the prosecuting attorney inform the Parole
262 Board of the circumstances surrounding a conviction or plea of
263 guilty, plea bargaining and other background information that
264 might be useful in its deliberations.

265 (tn) Before releasing any inmate on parole, the Parole
266 Board shall arrange for the inmate to appear in person before a
267 Parole Board panel and the panel may examine and interrogate
268 him or her on any matters pertaining to his or her parole,
269 including reports before the Parole Board made pursuant to the
270 provisions of this section: *Provided*, That an inmate may appear
271 by video teleconference if the members of the Parole Board

272 panel conducting the examination are able to contemporaneously
273 see the inmate and hear all of his or her remarks and if the
274 inmate is able to contemporaneously see each of the members of
275 the panel conducting the examination and hear all of the
276 members' remarks. The panel shall reach its own written
277 conclusions as to the desirability of releasing the inmate on
278 parole and the majority of the panel considering the release must
279 concur in the decision. The warden or superintendent shall
280 furnish all necessary assistance and cooperate to the fullest
281 extent with the Parole Board. All information, records and
282 reports received by the Parole Board shall be kept on permanent
283 file.

284 (n) The Parole Board and its designated agents are at all
285 times to have access to inmates imprisoned in any state
286 correctional institution or in any jail in this state and may obtain
287 any information or aid necessary to the performance of its duties
288 from other departments and agencies of the state or from any
289 political subdivision of the state.

290 (o) The Parole board shall, if requested by the Governor,
291 investigate and consider all applications for pardon, reprieve or
292 commutation and shall make recommendation on the
293 applications to the Governor.

294 (p) (1) Prior to making a recommendation for pardon,
295 reprieve or commutation, the board shall notify the sentencing
296 judge and prosecuting attorney at least ten days before the
297 recommendation.

298 (2) Notwithstanding any other provision of law to the
299 contrary, if the board grants a person parole, the board shall
300 provide written notice to the prosecuting attorney and circuit
301 judge of the county in which the inmate was prosecuted, that
302 parole has been granted. The notice shall be sent by certified
303 mail, return receipt requested, and include the anticipated date of

304 release and the person's anticipated future residence. A written
305 statement of reasons for releasing the person, prepared pursuant
306 to subsection (b) of this section, shall be provided upon request.

307 (q) A parolee shall participate as a condition of parole in the
308 litter control program of the county to which he or she is
309 released to the extent directed by the Parole Board, unless the
310 board specifically finds that this alternative service would be
311 inappropriate.

§62-12-14a. Director of employment; director of housing; released inmates; duties.

1 The Commissioner of Corrections may employ or contract
2 for a director of employment and a director of housing for
3 released inmates. The director of employment shall work with
4 federal, state, county and local government and private entities
5 to negotiate agreements which facilitate employment
6 opportunities for released inmates. The director of housing shall
7 work with federal, state, county and local government and
8 private entities to negotiate agreements which facilitate housing
9 opportunities for released inmates. The director of employment
10 shall investigate job opportunities and give every possible
11 assistance in helping released inmates find employment. The
12 director of housing shall work in conjunction with the parole
13 division and the Parole Board to reduce release delays due to
14 lack of a home plan, develop community housing resources and
15 provide short-term loans to released inmates for costs related to
16 reentry into the community.

§62-12-15. Powers and duties of state parole officers.

1 (a) Each state parole officer shall:

2 (1) Investigate all cases referred to him or her for
3 investigation by the Commissioner of Corrections and report in
4 writing on the investigation;

5 (2) Update the standardized risk and needs assessment
6 adopted by the Division of Corrections under subsection (h),
7 section thirteen of this article for each parolee for whom an
8 assessment has not been conducted for parole by a specialized
9 assessment officer;

10 (3) Supervise each parolee according to the assessment and
11 supervision standards determined by the Commissioner of
12 Corrections;

13 (4) Furnish to each parolee under his or her supervision a
14 written statement of the conditions of his or her parole together
15 with a copy of the rules prescribed by the Commissioner of
16 Corrections for the supervision of parolees;

17 (5) Keep informed concerning the conduct and condition of
18 each parolee under his or her supervision and report on the
19 conduct and condition of each parolee in writing as often as
20 required by the Commissioner of Corrections;

21 (6) Use all practicable and suitable methods to aid and
22 encourage a parolee and to bring about improvement in his or
23 her conduct and condition;

24 (7) Keep detailed records of his or her work;

25 (8) Keep accurate and complete accounts of and give
26 receipts for all money collected from parolees under his or her
27 supervision and pay over the money to persons designated by a
28 circuit court or the Commissioner of Corrections ;

29 (9) Give bond with good security, to be approved by the
30 Commissioner of Corrections, in a penalty of not less than
31 \$1,000 nor more than \$3,000, as determined by the
32 Commissioner of Corrections; and

33 (10) Perform any other duties required by the Commissioner
34 of Corrections.

35 (b) Each state parole officer may, with or without an order
36 or warrant, arrest or order confinement of any parolee. He or she
37 has all the powers of a notary public, with authority to act
38 anywhere within the state.

39 (c) The Commissioner of Corrections may issue a certificate
40 authorizing any state parole officer who has successfully
41 completed the Division of Corrections' training program for
42 firearms certification, which is the equivalent of that required of
43 deputy sheriffs, to carry firearms or concealed weapons. Any
44 parole officer authorized by the Commissioner of Corrections
45 may, without a state license, carry firearms and concealed
46 weapons. Each state parole officer, authorized by the
47 Commissioner of Corrections, shall carry with him or her a
48 certificate authorizing him or her to carry a firearm or concealed
49 weapon bearing the official signature of the Commissioner of
50 Corrections.

§62-12-17. Conditions of release on probation and parole.

1 (a) Release and supervision on parole of any person,
2 including the supervision by the Division of Corrections of any
3 person paroled by any other state or by the federal government,
4 shall be upon the following conditions:

5 (1) That the parolee may not, during the period of his or her
6 parole, violate any criminal law of this or any other state or of
7 the United States;

8 (2) That the parolee may not, during the period of his or her
9 parole, leave the state without the consent of the Division of
10 Corrections;

11 (3) That the parolee complies with the rules prescribed by
12 the Division of Corrections for his or her supervision by the
13 parole officer;

14 (4) That in every case in which the parolee for a conviction
15 is seeking parole from an offense against a child, defined in
16 section twelve, article eight, chapter sixty-one of this code, or
17 article eight-b or eight-d of said chapter, or similar convictions
18 from other jurisdictions where the parolee is returning or
19 attempting to return to this state pursuant to the provisions of
20 article six, chapter twenty-eight of this code, the parolee may not
21 live in the same residence as any minor child nor exercise
22 visitation with any minor child nor may he or she have any
23 contact with the victim of the offense; and

24 (5) That the parolee, and all federal or foreign state
25 probationers and parolees whose supervision may have been
26 undertaken by this state, pay a fee, based on his or her ability to
27 pay, not to exceed \$40 per month to defray the costs of
28 supervision.

29 (b) The Commissioner of Corrections shall keep a record of
30 all actions taken and account for moneys received. All moneys
31 shall be deposited in a special account in the State Treasury to be
32 known as the Parolee's Supervision Fee Fund. Expenditures
33 from the fund shall be for the purposes of providing the parole
34 supervision required by the provisions of this code and are not
35 authorized from collections, but are to be made only in
36 accordance with appropriation by the Legislature and in
37 accordance with the provisions of article three, chapter twelve of
38 this code and upon the fulfillment of the provisions set forth in
39 article two, chapter five-a of this code. Amounts collected which
40 are found, from time to time, to exceed the funds needed for
41 purposes set forth in this article may be transferred to other
42 accounts or funds and redesignated for other purposes by
43 appropriation of the Legislature.

44 (c) The Division of Corrections shall consider the following
45 factors in determining whether a parolee or probationer is
46 financially able to pay the fee:

47 (1) Current income prospects for the parolee or probationer,
48 taking into account seasonal variations in income;

49 (2) Liquid assets of the parolee or probationer, assets of the
50 parolee or probationer that may provide collateral to obtain funds
51 and assets of the parolee or probationer that may be liquidated to
52 provide funds to pay the fee;

53 (3) Fixed debts and obligations of the parolee or probationer,
54 including federal, state and local taxes and medical expenses;

55 (4) Child care, transportation and other reasonably necessary
56 expenses of the parolee or probationer related to employment;
57 and

58 (5) The reasonably foreseeable consequences for the parolee
59 or probationer if a waiver of, or reduction in, the fee is denied.

60 (d) In addition, the Division of Corrections may impose,
61 subject to modification at any time, any other conditions which
62 the division considers advisable.

63 (e) The Division of Corrections may order substance abuse
64 treatment as a condition or as a modification of parole, only if
65 the standardized risk and needs assessment indicates the offender
66 has a high risk for reoffending and a need for substance abuse
67 treatment.

68 (f) The Division of Corrections may impose, as an initial
69 condition of parole, a term of reporting to a day report center or
70 other community corrections program only if the standardized
71 risk and needs assessment indicates a moderate to high risk of
72 reoffending and moderate to high criminogenic need. Any

73 parolee required to report to a day report center or other
74 community corrections program is subject to all the rules and
75 regulations of the center or program and may be removed at the
76 discretion of the center's or program's director. The
77 Commissioner of Corrections shall enter into a master agreement
78 with the Division of Justice and Community Services to provide
79 reimbursement to counties for the use of community corrections
80 programs by eligible parolees. Any placement by the Division of
81 Corrections of a parolee in a day report center or other
82 community corrections program may only be done with the
83 center or program director's consent and the parolee is subject to
84 all of the rules and regulations of the center or program and may
85 be removed by the director.

§62-12-19. Violation of parole.

1 (a) If at any time during the period of parole there is
2 reasonable cause to believe that the parolee has violated any of
3 the conditions of his or her release on parole, the parole officer
4 may arrest him or her with or without an order or warrant, or the
5 Commissioner of Corrections may issue a written order or
6 warrant for his or her arrest. The written order or warrant is
7 sufficient for his or her arrest by any officer charged with the
8 duty of executing an ordinary criminal process. The
9 commissioner's written order or warrant delivered to the sheriff
10 against the parolee shall be a command to keep custody of the
11 parolee for the jurisdiction of the Division of Corrections.
12 During the period of custody, the parolee may be admitted to
13 bail by the court before which the parolee was sentenced. If the
14 parolee is not released on a bond, the costs of confining the
15 paroled prisoner shall be paid out of the funds appropriated for
16 the Division of Corrections.

17 (1) If reasonable cause is found to exist that a parolee has
18 violated a term or terms of his or her release on parole that does
19 not constitute:

20 (A) Absconding supervision;

21 (B) New criminal conduct other than a minor traffic
22 violation or simple possession of a controlled substance; or

23 (C) Violation of a special condition of parole designed either
24 to protect the public or a victim; the parole officer may, after
25 consultation with and written approval by the director of parole
26 services, for the first violation, require the parolee to serve a
27 period of confinement up to sixty days or, for the second
28 violation, a period of confinement up to one hundred twenty
29 days: *Provided, That* the Division of Corrections shall notify the
30 Parole Board when a parolee is serving such a term of
31 confinement and the Parole Board may deny further
32 confinement. A parolee serving a term of confinement in the first
33 or second instance may be confined in jail or any other facility
34 designated by the commissioner, but shall be committed to the
35 custody of the Commissioner of Corrections, and the costs of
36 confining the parolee shall be paid out of funds appropriated for
37 the Division of Corrections: *Provided, however, That* upon
38 written request, the parolee shall be afforded the right to a
39 hearing within forty-five days before the Parole Board regarding
40 whether he or she violated the conditions of his or her release on
41 parole.

42 (2) When a parolee is in custody for a violation of the
43 conditions of his or her parole, he or she shall be given a prompt
44 and summary hearing before a Parole Board panel upon his or
45 her written request, at which the parolee and his or her counsel
46 shall be given an opportunity to attend.

47 (A) If at the hearing it is determined that reasonable cause
48 exists to believe that the parolee has:

49 (i) Absconded supervision;

50 (ii) Committed new criminal conduct other than a minor
51 traffic violation or simple possession of a controlled substance;
52 or

53 (iii) Violated a special condition of parole design to protect
54 either the public or a victim; the panel may revoke his or her
55 parole and may require him or her to serve in a state correctional
56 institution the remainder or any portion of his or her maximum
57 sentence for which, at the time of his or her release, he or she
58 was subject to imprisonment.

59 (B) If the Parole Board panel finds that reasonable cause
60 exists to believe that the parolee has violated a condition of
61 release or supervision other than the conditions of parole set
62 forth in subparagraph (A), subdivision (2) of this subsection, the
63 panel shall require the parolee to serve, for the first violation, a
64 period of confinement up to sixty days or, for the second
65 violation, a period of confinement up to one hundred twenty
66 days unless the Parole Board makes specific written findings of
67 fact that a departure from the specific limitations of this
68 paragraph is warranted: *Provided*, That if the violation of the
69 conditions of parole or rules for his or her supervision is not a
70 felony as set out in section eighteen of this article, the panel
71 may, if in its judgment the best interests of justice do not require
72 a period of confinement, reinstate him or her on parole. The
73 Division of Corrections shall effect release from custody upon
74 approval of a home plan.

75 (b) Notwithstanding any provision of this code to the
76 contrary, when reasonable cause has been found to believe that
77 a parolee has violated the conditions of his or her parole but the
78 violation does not constitute felonious conduct, the
79 commissioner may, with the written consent of the parolee,
80 allow the parolee to remain on parole with additional conditions
81 or restrictions. The additional conditions or restrictions may

82 include, but are not limited to, participation in any program
83 described in subsection (d), section five, article eleven-c of this
84 chapter. If the parolee complies with the conditions of parole the
85 commissioner may not revoke his or her parole for the conduct
86 which constituted the violation. If the parolee fails to comply
87 with the conditions or restrictions and all other conditions of
88 release, that failure is an additional violation of parole and the
89 commissioner may proceed against the parolee under the
90 provisions of this section for the original violation as well as any
91 subsequent violations.

92 (c) When a parolee has violated the conditions of his or her
93 release on parole by confession to, or being convicted of, any of
94 the crimes set forth in section eighteen of this article, he or she
95 shall be returned to the custody of the Division of Corrections to
96 serve the remainder of his or her maximum sentence, during
97 which remaining part of his or her sentence he or she is
98 ineligible for further parole.

99 (d) Whenever a person's parole has been revoked, the
100 commissioner shall, upon receipt of the panel's written order of
101 revocation, convey and transport the paroled prisoner to a state
102 correctional institution. A parolee whose parole has been
103 revoked shall remain in custody until delivery to a corrections
104 officer sent and duly authorized by the commissioner for the
105 removal of the parolee to a state correctional institution. The cost
106 of confining the parolee shall be paid out of the funds
107 appropriated for the Division of Corrections.

108 (e) When a parolee is convicted of, or confesses to, any one
109 of the crimes enumerated in section eighteen of this article, it is
110 the duty of the Parole Board to cause him or her to be returned
111 to this state for a summary hearing as provided by this article.
112 Whenever a parolee has absconded supervision, the
113 commissioner shall issue a warrant for his or her apprehension
114 and return to this state for the hearing provided in this article:

115 *Provided*, That the panel considering revocation may, if it
116 determines the best interests of justice do not require revocation,
117 cause the parolee to be reinstated to parole.

118 (f) A warrant filed by the commissioner shall stay the
119 running of his or her sentence until the parolee is returned to the
120 custody of the Division of Corrections and is physically in West
121 Virginia.

122 (g) Whenever a parolee who has absconded supervision or
123 has been transferred out of this state for supervision pursuant to
124 section one, article six, chapter twenty-eight of this code is
125 returned to West Virginia due to a violation of parole and costs
126 are incurred by the Division of Corrections, the commissioner
127 may assess reasonable costs from the parolee's inmate funds or
128 the parolee as reimbursement to the Division of Corrections for
129 the costs of returning him or her to West Virginia.

130 (h) Conviction of a felony for conduct occurring during the
131 period of parole is proof of violation of the conditions of parole
132 and the hearing procedures required by the provisions of this
133 section are inapplicable.

134 (i) The Commissioner of Corrections may issue subpoenas
135 for persons and records necessary to prove a violation of the
136 terms and conditions of a parolee's parole either at a preliminary
137 hearing or at a final hearing before a Parole Board panel. The
138 subpoenas shall be served in the same manner provided in the
139 Supreme Court of Appeals of West Virginia Rules of Criminal
140 Procedure. The subpoenas may be enforced by the commissioner
141 through application or petition of the commissioner to the circuit
142 court for contempt or other relief.

§62-12-29. Shared information for community supervision.

1 (a) The Administrative Director of the Supreme Court of
2 Appeals of West Virginia is requested to assemble a community

3 supervision committee, to include representatives of the
4 judiciary, probation, parole, day report centers, magistrates,
5 sheriffs, corrections and other members at the discretion of the
6 director. The administrative director shall appoint a chair from
7 among the members and attend the meeting ex officio.

8 (b) The committee shall:

9 (1) Design and deploy a method for probation officers,
10 parole officers, day report centers and others providing
11 community supervision to electronically share offender
12 information and assessments;

13 (2) Coordinate information reporting and access across
14 agencies continuing supervision;

15 (3) Collect and share information about assessed and
16 collected restitution among agencies continuing supervision;

17 (4) Collect sentencing-level data to enable the study of
18 sentencing practices across the state; and

19 (5) Coordinate with the Community Corrections
20 Subcommittee of the Governor's Committee on Crime,
21 Delinquency and Correction in the discharge of these duties.

22 (c) The committee shall annually submit a report on its
23 activities during the previous year, on or before September 30,
24 to the Governor, the Speaker of the House of Delegates, the
25 President of the Senate and, upon request, to any individual
26 member of the Legislature.

ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT.

§62-15-2. Definitions.

1 For the purposes of this article:

2 (1) "Assessment" means a diagnostic evaluation to
3 determine whether and to what extent a person is a drug offender
4 under this article and would benefit from its provisions. The
5 assessment shall be conducted in accordance with the
6 standardized risk and needs assessment and risk cut-off scores
7 adopted by the West Virginia Supreme Court of Appeals. The
8 results of all standardized risk and needs assessments and risk
9 cut-off scores are confidential.

10 (2) "Continuum of care" means a seamless and coordinated
11 course of substance abuse education and treatment designed to
12 meet the needs of drug offenders as they move through the
13 criminal justice system and beyond, maximizing self-sufficiency.

14 (3) "Controlled substance" means a drug or other substance
15 for which a medical prescription or other legal authorization is
16 required for purchase or possession.

17 (4) "Drug" means a controlled substance, an illegal drug or
18 other harmful substance.

19 (5) "Drug court" means a judicial intervention process that
20 incorporates the Ten Key Components and may include
21 preadjudication or post-adjudication participation.

22 (6) "Drug court team" shall consist of the following
23 members who are assigned to the drug court:

24 (A) The drug court judge, which may include a magistrate,
25 mental hygiene commissioner or other hearing officer;

26 (B) The prosecutor;

27 (C) The public defender or a member of the criminal defense
28 bar;

29 (D) A representative from the day report center or
30 community corrections program, if operating in the jurisdiction;

31 (E) A law-enforcement officer;

32 (F) The drug court coordinator;

33 (G) A representative from a circuit court probation office or
34 the division of parole supervision or both;

35 (H) One or more substance abuse treatment providers; and

36 (I) Any other persons selected by the drug court team.

37 (7) “Drug offender” means an adult person charged with a
38 drug-related offense or an offense in which substance abuse is
39 determined from the evidence to have been a factor in the
40 commission of the offense.

41 (8) “Dual diagnosis” means a substance abuse and
42 cooccurring mental health disorder.

43 (9) “Local advisory committee” may consist of the following
44 members or their designees:

45 (A) A drug court circuit judge, who shall serve as chair;

46 (B) Drug court magistrates;

47 (C) The prosecutor;

48 (D) A public defender;

49 (E) The drug court coordinator;

50 (F) A member of the criminal defense bar;

51 (G) The circuit clerk;

52 (H) A day report center director;

53 (I) A circuit court probation officer, parole officer or both;

54 (J) Law enforcement;

55 (K) One or more substance abuse treatment providers;

56 (L) A corrections representative; and

57 (M) Any such other person or persons the chair considers
58 appropriate.

59 (10) "Illegal drug" means a drug whose manufacture, sale,
60 use or possession is forbidden by law.

61 (11) "Memorandum of understanding" means a written
62 document setting forth an agreed upon procedure.

63 (12) "Offender" means an adult charged with a criminal
64 offense punishable by incarceration.

65 (13) "Other harmful substance" means a misused substance
66 otherwise legal to possess, including alcohol.

67 (14) "Preadjudication order" means a court order requiring
68 a drug offender to participate in drug court before charges are
69 filed or before conviction.

70 (15) "Post adjudication" means a court order requiring a
71 drug offender to participate in drug court after having entered a
72 plea of guilty or *nolo contendere* or having been found guilty.

73 (16) "Recidivism" means any subsequent arrest for a serious
74 offense (carrying a sentence of at least one year) resulting in the
75 filing of a charge.

76 (17) "Relapse" means a return to substance use after a period
77 of abstinence.

78 (18) "Split sentencing" means a sentence which includes a
79 period of incarceration followed by a period of supervision.

80 (19) "Staffing" means the meeting before a drug offender's
81 appearance in drug court in which the drug court team discusses
82 a coordinated response to the drug offender's behavior.

83 (20) "Substance" means drugs or alcohol.

84 (21) "Substance abuse" means the illegal or improper
85 consumption of a substance.

86 (22) "Substance abuse treatment" means a program designed
87 to provide prevention, education, and therapy directed toward
88 ending substance abuse and preventing a return to substance
89 usage, through a continuum of care, including: Treatment of
90 cooccurring substance abuse and mental health issues; outpatient
91 care; intensive outpatient care; residential care; peer support;
92 relapse prevention; and cognitive behavioral programming,
93 based on research about effective treatment/recovery models for
94 the offender population.

95 (23) "Ten Key Components" means the following
96 benchmarks intended to describe the very best practices, designs,
97 and operations of drug courts. These benchmarks are meant to
98 serve as a practical, yet flexible framework for developing
99 effective drug courts in vastly different jurisdictions and to
100 provide a structure for conducting research and evaluation for
101 program accountability:

102 (A) Drug courts integrate alcohol and other drug treatment
103 services with justice system case processing;

104 (B) Using a nonadversarial approach, prosecution and
105 defense counsel promote public safety while protecting
106 participants' due process rights;

107 (C) Eligible participants are identified early and promptly
108 placed in the drug court program;

109 (D) Drug courts provide access to a continuum of alcohol,
110 drug, and other related treatment and rehabilitation services;

111 (E) Abstinence is monitored by frequent alcohol and other
112 drug testing;

113 (F) A coordinated strategy governs drug court responses to
114 participants' compliance;

115 (G) Ongoing judicial interaction with each drug court
116 participant is essential;

117 (H) Monitoring and evaluation measure the achievement of
118 program goals and gauge effectiveness;

119 (I) Continuing interdisciplinary education promotes effective
120 drug court planning, implementation and operations; and

121 (J) Forging partnerships among drug courts, public agencies
122 and community-based organizations generates local support and
123 enhances drug court effectiveness.

124 (24) "Treatment supervision" means a program under which
125 an eligible felony drug offender, pursuant to section six-a of this
126 article, is ordered to undergo treatment for substance abuse by a
127 circuit court judge as a condition of drug court, a condition of
128 probation or as a modification of probation.

§62-15-4. Court authorization and structure.

1 (a) Each judicial circuit or two or more adjoining judicial
2 circuits may establish a drug court or regional drug court
3 program under which drug offenders will be processed to
4 address appropriately, the identified substance abuse problem as
5 a condition of pretrial release, probation, incarceration, parole or
6 other release from a correctional facility: *Provided*, That all
7 judicial circuits must be participating in a drug court or regional

8 drug court program in accordance with the provisions of this
9 article by July 1, 2016.

10 (b) The structure, method, and operation of each drug court
11 program may differ and should be based upon the specific needs
12 of and resources available to the judicial circuit or circuits where
13 the drug court program is located.

14 (c) A drug court program may be preadjudication or post-
15 adjudication for an adult offender.

16 (d) Participation in drug court, with the consent of the
17 prosecution and the court, shall be pursuant to a written
18 agreement.

19 (e) A drug court may grant reasonable incentives under the
20 written agreement if it finds that the drug offender:

21 (1) Is performing satisfactorily in drug court;

22 (2) Is benefitting from education, treatment and
23 rehabilitation;

24 (3) Has not engaged in criminal conduct; or

25 (4) Has not violated the terms and conditions of the
26 agreement.

27 (f) A drug court may impose reasonable sanctions on the
28 drug offender, including incarceration for the underlying offense
29 or expulsion from the program, pursuant to the written
30 agreement, if it finds that the drug offender:

31 (1) Is not performing satisfactorily in drug court;

32 (2) Is not benefitting from education, treatment or
33 rehabilitation;

34 (3) Has engaged in conduct rendering him or her unsuitable
35 for the program;

36 (4) Has otherwise violated the terms and conditions of the
37 agreement; or

38 (5) Is for any reason unable to participate.

39 (g) Upon successful completion of drug court, a drug
40 offender's case shall be disposed of by the judge in the manner
41 prescribed by the agreement and by the applicable policies and
42 procedures adopted by the drug court. This may include, but is
43 not limited to, withholding criminal charges, dismissal of
44 charges, probation, deferred sentencing, suspended sentencing,
45 split sentencing, or a reduced period of incarceration.

46 (h) Drug court shall include the Ten Key Components and
47 the drug court team shall act to ensure compliance with them.

48 (i) Nothing contained in this article confers a right or an
49 expectation of a right to participate in a drug court nor does it
50 obligate a drug court to accept every drug offender.

51 (j) Neither the establishment of a drug court nor anything
52 herein may be construed as limiting the discretion of the
53 jurisdiction's prosecutor to act on any criminal case which he or
54 she deems advisable to prosecute.

55 (k) Each drug court judge may establish rules and may make
56 special orders as necessary that do not conflict with rules and
57 orders promulgated by the Supreme Court of Appeals which has
58 administrative authority over the courts. The Supreme Court of
59 Appeals shall provide uniform referral, procedure and order
60 forms that shall be used in all drug courts in this state.

§62-15-6a. Treatment supervision.

1 (a) A felony drug offender is eligible for treatment
2 supervision only if the offender would otherwise be sentenced to

3 prison, and the standardized risk and needs assessment indicates
4 the offender has a high risk for reoffending and a need for
5 substance abuse treatment: *Provided*, That an inmate who is, or
6 has been, convicted for a felony crime of violence against the
7 person, a felony offense where the victim was a minor child or
8 a felony offense involving the use of a firearm, as defined in
9 subsections (o) and (p), section twenty-seven, article five,
10 chapter twenty-eight of this code, shall not be eligible for
11 treatment supervision.

12 (b) As a condition of drug court, a condition of probation or
13 as a modification of probation, a circuit court judge may impose
14 treatment supervision on an eligible drug offender convicted of
15 a felony: *Provided*, That a judge may impose treatment
16 supervision on an eligible drug offender convicted of a felony,
17 notwithstanding the results of the risk assessment, upon making
18 specific written findings of fact as to the reason for the
19 departure.

20 (c) Whenever a circuit court judge determines that a
21 treatment supervision participant has violated the conditions of
22 his or her treatment supervision involving the participant's use
23 of alcohol or a controlled substance, the judge may order a
24 period of incarceration to encourage compliance with program
25 requirements.

26 (1) Upon written finding by the circuit court judge that the
27 participant would otherwise be sentenced to the custody of the
28 Commissioner of Corrections for service of the underlying
29 sentence, the cost of the incarceration order under this
30 subsection, not to exceed a period of thirty days in any one
31 instance, shall be paid by the Division of Corrections.

32 (2) Whenever a circuit court judge orders the incarceration
33 of a treatment supervision participant pursuant to this subsection,
34 a copy of the order of confinement shall be provided by the clerk

35 of the circuit court within five days to the Commissioner of
36 Corrections.

37 (d) The Division of Justice and Community Services shall in
38 consultation with the Governor's Advisory Council on Substance
39 Abuse, created by Executive Order No. 5-11, use appropriated
40 funds to develop proposed substance abuse treatment plans to
41 serve those offenders under treatment supervision in each
42 judicial circuit and on parole supervision.

43 (e) The Division of Justice and Community Services, in
44 consultation with the Governor's Advisory Committee on
45 Substance Abuse, shall develop:

46 (1) Qualifications for provider certification to deliver a
47 continuum of care to offenders;

48 (2) Fee reimbursement procedures; and

49 (3) Other matters related to the quality and delivery of
50 services.

51 (f) The Division of Justice and Community Services shall
52 require education and training for providers which shall include,
53 but not be limited to, cognitive behavioral training. The duties of
54 providers who provide services under this section may include:
55 Notifying the probation department and the court of any offender
56 failing to meet the conditions of probation or referrals to
57 treatment; appearing at revocation hearings when required; and
58 providing assistance with data reporting and treatment program
59 quality evaluation.

60 (g) The cost for all drug abuse assessments and certified
61 drug treatment under this section and subsection (e), section
62 seventeen, article twelve of this chapter shall be paid by the
63 Division of Justice and Community Services from funds
64 appropriated for that purpose. The Division of Justice and

65 Community Services shall contract for payment for the services
66 provided to eligible offenders.

67 (h) The Division of Justice and Community Services, in
68 consultation with the Governor's Advisory Council on Substance
69 Abuse, shall submit an annual report on or before September 30
70 to the Governor, the Speaker of the House of Delegates, the
71 President of the Senate and, upon request, to any individual
72 member of the Legislature containing:

73 (1) The dollar amount and purpose of funds provided for the
74 fiscal year;

75 (2) The number of people on treatment supervision who
76 received services and whether their participation was the result
77 of a direct sentence or in lieu of revocation;

78 (3) The number of people on treatment supervision who,
79 pursuant to a judge's specific written findings of fact, received
80 services despite the risk assessment indicating less than high risk
81 for reoffending and a need for substance abuse treatment;

82 (4) The type of services provided;

83 (5) The rate of revocations and successful completions for
84 people who received services;

85 (6) The number of people under supervision receiving
86 treatment under this section who were rearrested and confined
87 within two years of being placed under supervision;

88 (7) The dollar amount needed to provide services in the
89 upcoming year to meet demand and the projected impact of
90 reductions in program funding on cost and public safety
91 measures; and

92 (8) Other appropriate measures used to measure the
93 availability of treatment and the effectiveness of services.

94 (i) Subsections (a), (b), and (c) of this section shall take
95 effect on January 1, 2014. The remaining provisions of this
96 section shall take effect on July 1, 2013.

§62-15-6b. Intermediate incarceration sanctions for drug court participants; responsibility for costs of incarceration.

1 (a) Whenever a judge of a drug court determines that a
2 participant who has pled to a felony offense has committed a
3 violation of his or her conditions of participation which would,
4 in the judge's opinion, warrant a period of incarceration to
5 encourage compliance with program requirements, the cost of
6 the incarceration, not to exceed a period of thirty days in any one
7 instance, shall be paid by the Division of Corrections. The judge
8 must make a written finding that the participant would otherwise
9 be sentenced to the custody of the Commissioner of Corrections
10 for service of the underlying sentence.

11 (b) Whenever a drug court judge incarcerates a participant
12 pursuant to subsection (a) of this section, the clerk of the circuit
13 court shall provide a copy of the order of confinement within
14 five days to the Commissioner of Corrections.

CHAPTER 162

**(Com. Sub. for H. B. 2858 - By Delegates White,
Cowles, Andes, Boggs, R. Phillips, Marcum,
Skaff, Craig and Storch)**

[Passed April 9, 2013; in effect from passage.]

[Approved by the Governor on April 22, 2013.]

AN ACT to amend and reenact §24-2-4f of the Code of West Virginia,
1931, as amended, relating generally to consumer rate relief bonds;

providing that the rate adjustment mechanism is the exception to the state's pledge not to reduce, alter or impair consumer rate relief charges until all amounts to be paid to an assignee or financing party are paid or performed in full.

Be it enacted by the Legislature of West Virginia:

That §24-2-4f of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4f. Consumer rate relief bonds.

1 (a) *Legislative findings.* — The Legislature hereby finds and
2 declares as follows:

3 (1) That some electric utilities in the state have experienced
4 expanded net energy costs of a magnitude problematic to recover
5 from their customers through the commission's traditional cost
6 recovery mechanisms, which have resulted in unusually large
7 under-recoveries;

8 (2) That the financing costs of carrying such under-recovery
9 balances and projected costs can be considerable;

10 (3) That the use of traditional utility financing mechanisms
11 to finance or refinance the recovery of such under-recovery
12 balances and projected costs may result in considerable
13 additional costs to be reflected in the approved rates of electric
14 utility customers;

15 (4) That customers of electric utilities in the state have an
16 interest in the electric utilities financing the costs of such under-
17 recovery balances and projected costs at a lower cost than would
18 be afforded by traditional utility financing mechanisms;

19 (5) That alternative financing mechanisms exist which can
20 result in lower costs and mitigate rate impacts to customers and
21 the use of these mechanisms can prove highly beneficial to such
22 customers; and

23 (6) That in order to use such alternative financing
24 mechanisms, the commission must be empowered to adopt a
25 financing order that advances these goals. The Legislature,
26 therefore, determines that it is in the interest of the state and its
27 citizens to encourage and facilitate the use of alternative
28 financing mechanisms that will enable electric utilities to finance
29 or refinance expanded net energy costs at the lowest reasonably
30 practical cost under certain conditions and to empower the
31 commission to review and approve alternative financing
32 mechanisms when it determines that such approval is in the
33 public interest, as set forth in this section.

34 (b) *Definitions.* — As used in this section:

35 (1) “Adjustment mechanism” means a formula-based
36 mechanism for making adjustments to consumer rate relief
37 charges to correct for over-collection or under-collection of such
38 charges or otherwise to ensure the timely and complete payment
39 and recovery of such charges and financing costs. The
40 adjustment mechanism shall accommodate: (i) Standard
41 adjustments to consumer rate relief charges that are limited to
42 relatively stable conditions of operations; and (ii) nonstandard
43 adjustments to consumer rate relief charges that are necessary to
44 reflect significant changes from historical conditions of
45 operations, such as the loss of significant electrical load. The
46 adjustment mechanism is not to be used as a means to authorize
47 the issuance of consumer rate relief bonds in a principal amount
48 greater, or the payment or recovery of expanded net energy costs
49 in an amount greater, than that which was authorized in the
50 financing order which established the adjustment mechanism.

51 (2) "Ancillary agreement" means a bond insurance policy
52 letter of credit, reserve account, surety bond, swap arrangement,
53 hedging arrangement, liquidity or credit support arrangement or
54 other similar agreement or arrangement entered into in
55 connection with the issuance of consumer rate relief bonds that
56 is designed to promote the credit quality and marketability of the
57 bonds or to mitigate the risk of an increase in interest rates.

58 (3) "Assignee" means a person, corporation, limited liability
59 company, trust, partnership or other entity to which an interest
60 in consumer rate relief property is assigned, sold or transferred,
61 other than as security. The term also includes any entity to which
62 an assignee assigns, sells or transfers, other than as security, the
63 assignee's interest in or right to consumer rate relief property.

64 (4) "Bond" includes debentures, notes, certificates of
65 participation, certificates of beneficial interest, certificates of
66 ownership or other evidences of indebtedness or ownership that
67 are issued by an electric utility or an assignee under a final
68 financing order, the proceeds of which are used directly or
69 indirectly to recover, finance, or refinance expanded net energy
70 costs and that are secured by or payable from revenues from
71 consumer rate relief charges.

72 (5) "Bondholder" means any holder or owner of a consumer
73 rate relief bond.

74 (6) "Commission" means the Public Service Commission of
75 West Virginia, as it may be constituted from time to time, and
76 any successor agency exercising functions similar in purpose
77 thereto.

78 (7) "Consumer rate relief charges" means the amounts which
79 are authorized by the commission in a financing order to be
80 collected from a qualifying utility's customers in order to pay
81 and secure the debt service payments of consumer rate relief
82 bonds and associated financing costs.

83 (8) “Consumer rate relief costs” means those costs, including
84 financing costs, which are to be defrayed through consumer rate
85 relief charges.

86 (9) “Consumer rate relief property” means the property,
87 rights, and interests of a qualifying utility or an assignee under
88 a final financing order, including the right to impose, charge, and
89 collect the consumer rate relief charges that shall be used to pay
90 and secure the payment of consumer rate relief bonds and
91 financing costs, and including the right to obtain adjustments to
92 those charges, and any revenues, receipts, collections, rights to
93 payment, payments, moneys, claims, or other proceeds arising
94 from the rights and interests created under the final financing
95 order.

96 (10) “Expanded net energy costs” means historical and, if
97 deemed appropriate by the commission, projected costs,
98 inclusive of carrying charges on under-recovery balances
99 authorized by the commission, including costs incurred prior to
100 the effective date of this statute, adjudicated pursuant to the
101 commission’s expanded net energy cost proceedings, which have
102 been authorized for recovery by an order of the commission,
103 whether or not subject to judicial appeal.

104 (11) “Financing costs” means any of the following:

105 (A) Principal, interest and redemption premiums that are
106 payable on consumer rate relief bonds;

107 (B) A payment required under an ancillary agreement;

108 (C) An amount required to fund or replenish a reserve
109 account or another account established under an indenture,
110 ancillary agreement or other financing document relating to
111 consumer rate relief bonds or the payment of any return on the
112 capital contribution approved by the commission to be made by
113 a qualifying utility to an assignee;

114 (D) Costs of retiring or refunding an existing debt and equity
115 securities of a qualifying utility in connection with the issuance
116 of consumer rate relief bonds but only to the extent the securities
117 were issued for the purpose of financing expanded net energy
118 costs;

119 (E) Costs incurred by a qualifying utility to obtain
120 modifications of or amendments to an indenture, financing
121 agreement, security agreement, or similar agreement or
122 instrument relating to an existing secured or unsecured
123 obligation of the utility in connection with the issuance of
124 consumer rate relief bonds;

125 (F) Costs incurred by a qualifying utility to obtain a consent,
126 release, waiver, or approval from a holder of an obligation
127 described in subparagraph (E) of this subdivision that are
128 necessary to be incurred for the utility to issue or cause the
129 issuance of consumer rate relief bonds;

130 (G) Taxes, franchise fees or license fees imposed on
131 consumer rate relief charges;

132 (H) Costs related to issuing or servicing consumer rate relief
133 bonds or related to obtaining a financing order, including
134 servicing fees and expenses, trustee fees and expenses, legal fees
135 and expenses, administrative fees, placement fees, underwriting
136 fees, capitalized interest and equity, rating-agency fees and other
137 related costs authorized by the commission in a financing order;
138 and

139 (I) Costs that are incurred by the commission for a financial
140 adviser with respect to consumer rate relief bonds.

141 (12) "Financing order" means an order issued by the
142 commission under subsection (e) of this section that authorizes
143 a qualifying utility to issue consumer rate relief bonds and
144 recover consumer rate relief charges. A financing order may set

145 forth conditions or contingencies on the effectiveness of the
146 relief authorized therein and may grant relief that is different
147 from that which was requested in the application.

148 (13) "Final financing order" means a financing order that has
149 become final and has taken effect as provided in subdivision (10)
150 of subsection (e) of this section.

151 (14) "Financing party" means either of the following:

152 (A) A trustee, collateral agent or other person acting for the
153 benefit of any bondholder; or

154 (B) A party to an ancillary agreement, the rights and
155 obligations of which relate to or depend upon the existence of
156 consumer rate relief property, the enforcement and priority of a
157 security interest in consumer rate relief property, the timely
158 collection and payment of consumer rate relief charges or a
159 combination of these factors.

160 (15) "Financing statement" has the same meaning as in
161 section one-hundred-two, article nine, chapter forty-six of this
162 code.

163 (16) "Investment grade" means, with respect to the
164 unsecured debt obligations of a utility at any given time of
165 determination, a rating that is within the top four investment
166 rating categories as published by at least one nationally
167 recognized statistical rating organization as recognized by the
168 United States Securities and Exchange Commission.

169 (17) "Nonbypassable" means that the payment of consumer
170 rate relief charges may not be avoided by any West Virginia
171 retail customer of a qualifying utility or its successors and must
172 be paid by any such customer that receives electric delivery
173 service from such utility or its successors for as long as the
174 consumer rate relief bonds are outstanding.

175 (18) "Nonutility affiliate" means, with respect to any utility,
176 a person that: (i) Is an affiliate of the utility as defined in 42
177 U.S.C. §16451(1); and (ii) is not a public utility that provides
178 retail utility service to customers in the state within the meaning
179 of section two, article one of this chapter.

180 (19) "Parent" means, with respect to a utility, a registered
181 holding company or other person that holds a majority
182 ownership or membership interest in the utility.

183 (20) "Qualifying utility" means a public utility engaged in
184 the sale of electric service to retail customers in West Virginia
185 which has applied for and received from the commission a final
186 financing order under this section, including an affiliated electric
187 public utility which has applied jointly for and received such an
188 order.

189 (21) "Registered holding company" means, with respect to
190 a utility, a person that is: (i) A registered holding company as
191 defined in 42 U.S.C. §16451(8); and (ii) an affiliate of the utility
192 as defined in 42 U.S.C. §16451(1).

193 (22) "Regulatory sanctions" means, under the circumstances
194 presented, a regulatory or ratemaking sanction or penalty that the
195 commission is authorized to impose pursuant to this chapter or
196 any proceeding for the enforcement of any provision of this
197 chapter or any order of the commission that the commission is
198 authorized to pursue or conduct pursuant to this chapter,
199 including without limitation: (i) The initiation of any proceeding
200 in which the utility is required to show cause why it should not
201 be required to comply with the terms and conditions of a
202 financing order or the requirements of this section; (ii) the
203 imposition of penalties pursuant to article four of this chapter;
204 and (iii) a proceeding by mandamus, injunction or other
205 appropriate proceeding as provided in section two of this article.

206 (23) "Successor" means, with respect to an entity, another
207 entity that succeeds by operation of law to the rights and
208 obligations of the first legal entity pursuant to any bankruptcy,
209 reorganization, restructuring, or other insolvency proceeding,
210 any merger, acquisition, or consolidation, or any sale or transfer
211 of assets, regardless of whether any of these occur as a result of
212 a restructuring of the electric power industry or otherwise.

213 (c) *Application for financing order.*

214 (1) If an electric utility or affiliate obtains from the
215 commission an authorization or waiver required by any other
216 provision of this chapter or by commission order with respect to
217 the underlying expanded net energy costs proposed to be
218 financed through the mechanism of consumer rate relief bonds,
219 an electric utility, or two or more affiliated electric utilities
220 engaged in the delivery of electric service to customers in this
221 state, may apply to the commission for a financing order that
222 authorizes the following:

223 (A) The issuance of consumer rate relief bonds, in one or
224 more series, to recover only those expanded net energy costs that
225 could result in an under-recovery;

226 (B) The imposition, charging, and collection of consumer
227 rate relief charges, in accordance with the adjustment mechanism
228 approved by the commission under subparagraph (E),
229 subdivision (6), subsection (e) of this section to recover
230 sufficient amounts to pay and secure the debt service payments
231 of consumer rate relief bonds and associated financing costs; and

232 (C) The creation of consumer rate relief property under the
233 financing order.

234 (2) The commission may only consider applications made
235 pursuant to this subsection for the recovery of underlying

236 expanded net energy costs that would be reflected in schedules
237 of rates filed in calendar year 2012.

238 (d) *Information required in application for financing order.*

239 The application shall include all of the following:

240 (1) A description and quantification of the uncollected
241 expanded net energy costs that the electric utility seeks to
242 recover through the issuance of consumer rate relief bonds;

243 (2) An estimate of the date each series of consumer rate
244 relief bonds is expected to be issued;

245 (3) The expected term during which the consumerrate relief
246 costs for each series of consumer rate relief bonds are expected
247 to be recovered;

248 (4) An estimate of the financing costs associated with the
249 issuance of each series of consumer rate relief bonds;

250 (5) An estimate of the amount of consumer rate relief
251 charges necessary to recover the consumer rate relief costs set
252 forth in the application and the calculation for that estimate,
253 which calculation shall take into account the estimated date or
254 dates of issuance and the estimated principal amount of each
255 series of consumer rate relief bonds;

256 (6) A proposed methodology for allocating consumer rate
257 relief charges between and within tariff schedules and to special
258 contract customers;

259 (7) A description of a proposed adjustment mechanism,
260 reflecting the allocation methodology in subdivision (6) of this
261 subsection;

262 (8) A description of the benefits to the qualifying utility's
263 customers that are expected to result from the issuance of the

264 consumer rate relief bonds, including a demonstration that the
265 bonds and their financing costs are just and reasonable and are
266 reasonably expected to achieve the lowest reasonably attainable
267 cost in order to produce cost savings to customers and to
268 mitigate rate impacts on customers, as compared to traditional
269 financing mechanisms or traditional cost-recovery methods
270 available to the electric utility; and

271 (9) Other information required by commission rules.

272 (e) *Issuance of financing order.*

273 (1) Except as otherwise provided in this section, proceedings
274 on an application submitted by an electric utility under
275 subsection (c) of this section are governed by the commission's
276 standard procedural rules. Any party that participated in a
277 proceeding in which the subject expanded net energy costs were
278 authorized or approved automatically has standing to participate
279 in the financing order proceedings and the commission shall
280 determine the standing or lack of standing of any other petitioner
281 for party status.

282 (2) Within thirty days after the filing of an application under
283 subsection (c) of this section, the commission shall issue a
284 scheduling order for the proceeding.

285 (3) At the conclusion of proceedings on an application
286 submitted by an electric utility under subsection (c) of this
287 section, the commission shall issue either a financing order,
288 granting the application, in whole or with modifications, or an
289 order denying the application.

290 (4) The commission may issue a financing order under this
291 subsection if the commission finds that the issuance of the
292 consumer rate relief bonds and the consumer rate relief charges
293 authorized by the order are just and reasonable and are
294 reasonably expected to achieve the lowest reasonably attainable

295 cost in order to produce cost savings to customers and to
296 mitigate rate impacts on customers, as compared to traditional
297 financing mechanisms or traditional cost-recovery methods
298 available to the electric utility.

299 (5) The commission shall include all of the following in a
300 financing order issued under this subsection:

301 (A) A determination of the maximum amount and a
302 description of the expanded net energy costs that may be
303 recovered through consumer rate relief bonds issued under the
304 financing order;

305 (B) A description of consumer rate relief property, the
306 creation of which is authorized by the financing order;

307 (C) A description of the financing costs that may be
308 recovered through consumer rate relief charges and the period
309 over which those costs may be recovered;

310 (D) A description of the methodology and calculation for
311 allocating consumer rate relief charges between and within tariff
312 schedules and to special contract customers;

313 (E) A description and approval of the adjustment mechanism
314 for use in the imposition, charging, and collection of the
315 consumer rate relief charges, including: (i) The allocation
316 referred to in paragraph (D) of this subdivision and (ii) any
317 specific requirements for adjusting and reconciling consumer
318 rate relief charges for standard adjustments that are limited to
319 relatively stable conditions of operations and nonstandard
320 adjustments that are necessary to reflect significant changes from
321 historical conditions of operations, such as the loss of substantial
322 electrical load, so long as each and every application of the
323 adjustment mechanism is designed to assure the full and timely
324 payment of consumer rate relief bonds and associated financing
325 costs;

326 (F) The maximum term of the consumer rate relief bonds;

327 (G) A finding that the issuance of the consumer rate relief
328 bonds, including financing costs, is just and reasonable and are
329 reasonably expected to achieve the lowest reasonably attainable
330 cost in order to produce cost savings to customers and to
331 mitigate rate impacts on customers, as compared to traditional
332 financing mechanisms or traditional cost-recovery methods
333 available to the electric utility; and

334 (H) Any other provision the commission considers
335 appropriate to ensure the full and timely imposition, charging,
336 collection and adjustment, pursuant to an approved adjustment
337 mechanism, of the consumer rate relief charges.

338 (6) To the extent the commission deems appropriate and
339 compatible with the issuance advice letter procedure under
340 subdivision (9) of this subsection, the commission, in a financing
341 order, shall afford the electric utility flexibility in establishing
342 the terms and conditions for the consumer rate relief bonds to
343 accommodate changes in market conditions, including
344 repayment schedules, interest rates, financing costs, collateral
345 requirements, required debt service and other reserves, and the
346 ability of the qualifying utility, at its option, to effect a series of
347 issuances of consumer rate relief bonds and correlated
348 assignments, sales, pledges, or other transfers of consumer rate
349 relief property. Any changes made under this subdivision to
350 terms and conditions for the consumer rate relief bonds shall be
351 in conformance with the financing order.

352 (7) A financing order shall provide that the creation of
353 consumer rate relief property shall be simultaneous with the sale
354 of that property to an assignee as provided in the application and
355 the pledge of the property to secure consumer rate relief bonds.

356 (8) The commission, in a financing order, shall require that,
357 after the final terms of each issuance of consumer rate relief

358 bonds have been established, and prior to the issuance of those
359 bonds, the qualifying utility shall determine the resulting initial
360 consumer rate relief charges in accordance with the adjustment
361 mechanism described in the financing order. These consumer
362 rate relief charges shall be final and effective upon the issuance
363 of the consumer rate relief bonds, without further commission
364 action.

365 (9) Because the actual structure and pricing of the consumer
366 rate relief bonds will not be known at the time the financing
367 order is issued, in the case of every securitization approved by
368 the commission, the qualifying utility which intends to cause the
369 issuance of such bonds will provide to the commission and the
370 commission's financial adviser, if any, prior to the issuance of
371 the bonds, an issuance advice letter following the determination
372 of the final terms of the bonds. The issuance advice letter shall
373 indicate the final structure of the consumer rate relief bonds and
374 provide the best available estimate of total ongoing costs. The
375 issuance advice letter should report the initial consumer rate
376 relief charges and other information specific to the consumer
377 rate relief bonds to be issued, as the financing order may require.
378 The qualifying utility may proceed with the issuance of the
379 consumer rate relief bonds unless, prior to noon on the fourth
380 business day after the commission receives the issuance advice
381 letter, the commission issues a disapproval letter directing that
382 the bonds as proposed shall not be issued and the basis for that
383 disapproval. The financing order may provide such additional
384 provisions relating to the issuance advice letter process as the
385 commission deems appropriate.

386 (10) An order of the commission issued pursuant to this
387 subsection is a final order of the commission. Any party
388 aggrieved by the issuance of any such order may petition for
389 suspension and review thereof by the Supreme Court of Appeals
390 pursuant to section one, article five of this chapter. In the case of
391 a petition for suspension and review, the Supreme Court of

392 Appeals shall proceed to hear and determine the action as
393 expeditiously as practicable and give the action precedence over
394 other matters not accorded similar precedence by law.

395 (11) The financing order shall also provide for a procedure
396 requiring the qualifying utility to adjust its rates or provide
397 credits in a manner that would return to customers any
398 overpayments resulting from the securitization for the expanded
399 net energy costs in excess of actual prudently incurred costs as
400 subsequently determined by the commission. The adjustment
401 mechanism may not affect or impair the consumer rate relief
402 property or the right to impose, collect, or adjust the consumer
403 rate relief charges under this section.

404 (12) The commission may require, as a condition to the
405 effectiveness of the financing order but in every circumstance
406 subject to the limitations set forth in subdivision (3), subsection
407 (g) of this section, that the qualifying utility give appropriate
408 assurances to the commission that the qualifying utility and its
409 parent will abide by the following conditions during any period
410 in which any consumer rate relief bonds issued pursuant to the
411 financing order are outstanding, in addition to any other
412 obligation either may have under this code or federal law.
413 Without first obtaining the prior consent and approval of the
414 commission, the qualifying utility will not:

415 (A) Lend money, directly or indirectly, to a registered
416 holding company or a nonutility affiliate; or

417 (B) Guarantee the obligations of a registered holding
418 company or a nonutility affiliate.

419 (13) A financing order may require the qualifying utility to
420 file with the commission a periodic report showing the receipt
421 and disbursement of proceeds of consumer rate relief bonds and
422 consumer rate relief charges. A financing order may authorize

423 the staff of the commission to review and audit the books and
424 records of the qualifying utility relating to the receipt and
425 disbursement of such proceeds. The provisions of this
426 subdivision do not limit the authority of the commission under
427 this chapter to investigate the practices of the qualifying utility
428 or to audit the books and records of the qualifying utility.

429 (14) In the case of two or more affiliated utilities that have
430 jointly applied for a financing order as provided in subdivision
431 (1), subsection (c) of this section, a financing order may
432 authorize each affiliated utility to impose consumer rate relief
433 charges on its customers and to cause to be issued consumer rate
434 relief bonds and to receive and use the proceeds which it
435 receives with respect thereto as provided in subdivision (1),
436 subsection (j) of this section.

437 (15) The commission, in its discretion, may engage the
438 services of a financial adviser for the purpose of assisting the
439 commission in its consideration of an application for a financing
440 order and a subsequent issuance of consumer rate relief bonds
441 pursuant to a financing order.

442 (f) *Allowed disposition of consumer rate relief property.*

443 (1) The consumer rate relief property created in a final
444 financing order may be transferred, sold, conveyed or assigned
445 to any affiliate of the qualifying utility created for the limited
446 purpose of acquiring, owning or administering that property,
447 issuing consumer rate relief bonds under the final financing
448 order or a combination of these purposes.

449 (2) All or any portion of the consumer rate relief property
450 may be pledged to secure the payment of consumer rate relief
451 bonds, amounts payable to financing parties and bondholders,
452 amounts payable under any ancillary agreement and other
453 financing costs.

454 (3) A transfer, sale, conveyance, assignment, grant of a
455 security interest in or pledge of consumer rate relief property by
456 a qualifying utility to an affiliate of the utility, to the extent
457 previously authorized in a financing order, does not require the
458 prior consent and approval of the commission under section
459 twelve of this article.

460 (4) The consumer rate relief property constitutes an existing,
461 present property right, notwithstanding any requirement that the
462 imposition, charging, and collection of consumer rate relief
463 charges depend on the qualifying utility continuing to deliver
464 retail electric service or continuing to perform its servicing
465 functions relating to the billing and collection of consumer rate
466 relief charges or on the level of future energy consumption. That
467 property exists regardless of whether the consumer rate relief
468 charges have been billed, have accrued or have been collected
469 and notwithstanding any requirement that the value or amount of
470 the property is dependent on the future provision of service to
471 customers by the qualifying utility.

472 (5) All such consumer rate relief property continues to exist
473 until the consumer rate relief bonds issued under the final
474 financing order are paid in full and all financing costs relating to
475 the bonds have been paid in full.

476 (g) *Final financing order to remain in effect.*

477 (1) A final financing order remains in effect until the
478 consumer rate relief bonds issued under the final financing order
479 and all financing costs related to the bonds have been paid in
480 full.

481 (2) A final financing order remains in effect and unabated,
482 notwithstanding the bankruptcy, reorganization or insolvency of
483 the qualifying utility, or any affiliate of the qualifying utility, or
484 the commencement of any judicial or nonjudicial proceeding on
485 the final financing order.

486 (3) A final financing order is irrevocable and the
487 commission may not reduce, impair, postpone or terminate the
488 consumer rate relief charges authorized in the final financing
489 order or impair the property or the collection or recovery of
490 consumer rate relief costs.

491 (h) *Subsequent commission proceeding.*

492 Upon petition, or upon its own motion, the commission may
493 commence a proceeding and issue a subsequent financing order
494 that provides for retiring and refunding consumer rate relief
495 bonds issued under the final financing order if the commission
496 finds that the subsequent financing order satisfies all of the
497 requirements of subsection (e) of this section. Effective on
498 retirement of the refunded consumer rate relief bonds and the
499 issuance of new consumer rate relief bonds, the commission
500 shall adjust the related consumer rate relief charges accordingly.

501 (i) *Limits on commission authority.*

502 (1) The commission, in exercising its powers and carrying
503 out its duties regarding regulation and ratemaking, may not do
504 any of the following:

505 (A) Consider consumer rate relief bonds issued under a final
506 financing order to be the debt of the qualifying utility;

507 (B) Consider the consumer rate relief charges imposed,
508 charged or collected under a final financing order to be revenue
509 of the qualifying utility; or

510 (C) Consider the consumer rate relief costs or financing
511 costs authorized under a final financing order to be costs of the
512 qualifying utility.

513 (2) The commission may not order or otherwise require,
514 directly or indirectly, an electric utility to use consumer rate

515 relief bonds to finance the recovery of expanded net energy
516 costs.

517 (3) The commission may not refuse to allow the recovery of
518 expanded net energy costs solely because an electric utility has
519 elected or may elect to finance those costs through a financing
520 mechanism other than the issuance of consumer rate relief
521 bonds.

522 (4) If a qualifying utility elects not to finance such costs
523 through the issuance of consumer rate relief bonds as authorized
524 in a final financing order, those costs shall be recovered as
525 authorized by the commission previously or in subsequent
526 proceedings.

527 (j) *Duties of qualifying utility.*

528 (1) A qualifying utility shall cause the proceeds which it
529 receives with respect to consumer rate relief bonds issued
530 pursuant to a financing order to be used for the recovery of the
531 expanded net energy costs which occasioned the issuance of the
532 bonds, including the retirement of debt and/or equity of the
533 qualifying utility which was incurred to finance or refinance
534 such costs and for no other purpose.

535 (2) A qualifying utility shall annually provide a plain-
536 English explanation of the consumer rate relief charges approved
537 in the financing order, as modified by subsequent issuances of
538 consumer rate relief bonds authorized under the financing order,
539 if any, and by application of the adjustment mechanism as
540 provided in subsection (k) of this section. These explanations
541 may be made by bill inserts, website information or other
542 appropriate means as required, or approved if proposed by the
543 qualifying utility, by the commission.

544 (3) Collected consumer rate relief charges shall be applied
545 solely to the repayment of consumer rate relief bonds and other
546 financing costs.

547 (4) The failure of a qualifying utility to apply the proceeds
548 which it receives with respect to an issuance of consumer rate
549 relief bonds in a reasonable, prudent and appropriate manner or
550 otherwise comply with any provision of this section does not
551 invalidate, impair or affect any financing order, consumer rate
552 relief property, consumer rate relief charges or consumer rate
553 relief bonds. Subject to the limitations set forth in subsection (g)
554 of this section, nothing in this subdivision prevents or precludes
555 the commission from imposing regulatory sanctions against a
556 qualifying utility for failure to comply with the terms and
557 conditions of a financing order or the requirements of this
558 section.

559 (k) *Application of adjustment mechanism; filing of schedules*
560 *with commission.*

561 (1) A qualifying utility shall file with the commission, and
562 the commission shall approve, with or without such modification
563 as is allowed under this subsection, at least annually, or more
564 frequently as provided in the final financing order, a schedule
565 applying the approved adjustment mechanism to the consumer
566 rate relief charges authorized under the final financing order,
567 based on estimates of demand and consumption for each tariff
568 schedule and special contract customer and other mathematical
569 factors. The qualifying utility shall submit with the schedule a
570 request for approval to make the adjustments to the consumer
571 rate relief charges in accordance with the schedule.

572 (2) On the same day a qualifying utility files with the
573 commission its calculation of the adjustment, it shall cause
574 notice of the filing to be given, in the form specified in the
575 financing order, as a Class I legal advertisement in compliance
576 with the provisions of article three, chapter fifty-nine of this
577 code in a newspaper of general circulation published each
578 weekday in Kanawha County. This publication is only required
579 if the calculation of the adjustment filed by the utility with the

580 commission would result in an increase in the amount of the
581 consumer rate relief charges.

582 (3) The commission's review of a request for a standard
583 adjustment is limited to a determination of whether there is a
584 mathematical error in the application of the adjustment
585 mechanism to the consumer rate relief charges. No hearing is
586 required for such an adjustment. Each standard adjustment to the
587 consumer rate relief charges, in an amount as calculated by the
588 qualifying utility but incorporating any correction for a
589 mathematical error as determined by the commission,
590 automatically becomes effective fifteen days following the date
591 on which the qualifying utility files with the commission its
592 calculation of the standard adjustment.

593 (4) If the commission authorizes a nonstandard adjustment
594 procedure in the financing order, and the qualifying utility files
595 for such an adjustment, the commission shall allow interested
596 parties thirty days from the date the qualifying utility filed the
597 calculation of a nonstandard adjustment to make comments. The
598 commission's review of the total amount required for a
599 nonstandard adjustment shall be limited to the mathematical
600 accuracy of the total adjustment needed to assure the full and
601 timely payment of all debt service costs and related financing
602 costs of the consumer rate relief bonds. The commission may
603 also determine the proper allocation of those costs within and
604 between classes of customers and to special contract customers,
605 the proper design of the consumer rate relief charges and the
606 appropriate application of those charges under the methodology
607 set forth in the formula-based adjustment mechanism approved
608 in the financing order. If the commission determines that a
609 hearing is necessary, the commission shall hold a hearing on the
610 comments within forty days of the date the qualifying utility
611 filed the calculation of the nonstandard adjustment. The
612 nonstandard adjustment, as modified by the commission, if
613 necessary, shall be approved by the commission within sixty

614 days and the commission may shorten the filing and hearing
615 periods above in the financing order to ensure this result. Any
616 procedure for a nonstandard adjustment must be consistent with
617 assuring the full and timely payment of debt service of the
618 consumer rate relief bonds and associated financing costs.

619 (5) No adjustment approved or deemed approved under this
620 section affects the irrevocability of the final financing order as
621 specified in subdivision (3) of subsection (g) of this section.

622 (l) *Nonbypassability of consumer rate relief charges.*

623 (1) As long as consumer rate relief bonds issued under a
624 final financing order are outstanding, the consumer rate relief
625 charges authorized under the final financing order are
626 nonbypassable and apply to all existing or future West Virginia
627 retail customers of a qualifying utility or its successors and must
628 be paid by any customer that receives electric delivery service
629 from the utility or its successors.

630 (2) The consumer rate relief charges shall be collected by the
631 qualifying utility or the qualifying utility's successors or
632 assignees, or a collection agent, in full through a charge that is
633 separate and apart from the qualifying utility's base rates.

634 (m) *Utility default.*

635 (1) If a qualifying utility defaults on a required payment of
636 consumer rate relief charges collected, a court, upon application
637 by an interested party, or the commission, upon application to
638 the commission or upon its own motion, and without limiting
639 any other remedies available to the applying party, shall order
640 the sequestration and payment of the consumer rate relief
641 charges collected for the benefit of bondholders, assignees and
642 financing parties. The order remains in full force and effect
643 notwithstanding a bankruptcy, reorganization or other insolvency

644 proceedings with respect to the qualifying utility or any affiliate
645 thereof.

646 (2) Customers of a qualifying utility shall be held harmless
647 by the qualifying utility for its failure to remit any required
648 payment of consumer rate relief charges collected but such
649 failure does not affect the consumer rate relief property or the
650 rights to impose, collect and adjust the consumer rate relief
651 charges under this section.

652 (3) Consumer rate relief property under a final financing
653 order and the interests of an assignee, bondholder or financing
654 party in that property under a financing agreement are not
655 subject to set off, counterclaim, surcharge or defense by the
656 qualifying utility or other person, including as a result of the
657 qualifying utility's failure to provide past, present, or future
658 services, or in connection with the bankruptcy, reorganization,
659 or other insolvency proceeding of the qualifying utility, any
660 affiliate, or any other entity.

661 (n) *Successors to qualifying utility.*

662 A successor to a qualifying utility is bound by the
663 requirements of this section. The successor shall perform and
664 satisfy all obligations of the electric utility under the final
665 financing order in the same manner and to the same extent as the
666 qualifying utility including the obligation to collect and pay
667 consumer rate relief charges to the person(s) entitled to receive
668 them. The successor has the same rights as the qualifying utility
669 under the final financing order in the same manner and to the
670 same extent as the qualifying utility.

671 (o) *Security interest in consumer rate relief property.*

672 (1) Except as provided in subdivisions (3) through (5) of this
673 subsection, the creation, perfection and enforcement of a security
674 interest in consumer rate relief property under a final financing

675 order to secure the repayment of the principal of and interest on
676 consumerrate relief bonds, amounts payable under any ancillary
677 agreement and other financing costs are governed by this section
678 and not article nine of chapter forty-six of this code.

679 (2) The description of the consumer rate relief property in a
680 transfer or security agreement and a financing statement is
681 sufficient only if the description refers to this section and the
682 final financing order creating the property. This section applies
683 to all purported transfers of, and all purported grants of, liens on
684 or security interests in that property, regardless of whether the
685 related transfer or security agreement was entered into or the
686 related financing statement was filed, before or after the
687 effective date of this section.

688 (3) A security interest in consumer rate relief property under
689 a final financing order is created, valid and binding at the latest
690 of the date that the security agreement is executed and delivered
691 or the date that value is received for the consumer rate relief
692 bonds.

693 (4) The security interest attaches without any physical
694 delivery of collateral or other act and upon the filing of the
695 financing statement with the Office of the Secretary of State. The
696 lien of the security interest is valid, binding and perfected
697 against all parties having claims of any kind in tort, contract or
698 otherwise against the person granting the security interest,
699 regardless of whether the parties have notice of the lien. Also
700 upon this filing, a transfer of an interest in the consumer rate
701 relief property is perfected against all parties having claims of
702 any kind, including any judicial lien, or other lien creditors or
703 any claims of the seller or creditors of the seller, other than
704 creditors holding a prior security interest, ownership interest or
705 assignment in the property previously perfected in accordance
706 with this subsection.

707 (5) The Secretary of State shall maintain any financing
708 statement filed under this subsection in the same manner that the
709 secretary maintains financing statements filed by utilities under
710 article nine of chapter forty-six of this code. The filing of a
711 financing statement under this subsection is governed by the
712 provisions regarding the filing of financing statements in article
713 nine of chapter forty-six of this code. However, a person filing
714 a financing statement under this subsection is not required to file
715 any continuation statements to preserve the perfected status of its
716 security interest.

717 (6) A security interest in consumer rate relief property under
718 a final financing order is a continuously perfected security
719 interest and has priority over any other lien, created by operation
720 of law or otherwise, that may subsequently attach to that
721 property or those rights or interests unless the holder of any such
722 lien has agreed in writing otherwise.

723 (7) The priority of a security interest in consumer rate relief
724 property is not affected by the commingling of collected
725 consumer rate relief charges with other amounts. Any pledged or
726 secured party has a perfected security interest in the amount of
727 all consumer rate relief charges collected that are deposited in a
728 cash or deposit account of the qualifying utility in which such
729 collected charges have been commingled with other funds. Any
730 other security interest that may apply to those funds shall be
731 terminated when the funds are transferred to a segregated
732 account for an assignee or a financing party.

733 (8) No application of the adjustment mechanism as described
734 in subsection (k) of this section affects the validity, perfection or
735 priority of a security interest in or the transfer of consumer rate
736 relief property under the final financing order.

737 (p) *Transfer, sale, etc. of consumer rate relief property.*

738 (1) A sale, assignment or transfer of consumer rate relief
739 property under a final financing order is an absolute transfer and
740 true sale of, and not a pledge of or secured transaction relating
741 to, the seller's right, title and interest in, to and under the
742 property, if the documents governing the transaction expressly
743 state that the transaction is a sale or other absolute transfer. A
744 transfer of an interest in that property may be created only when
745 all of the following have occurred:

746 (A) The financing order has become final and taken effect;

747 (B) The documents evidencing the transfer of the property
748 have been executed and delivered to the assignee; and

749 (C) Value has been received for the property.

750 (2) The characterization of the sale, assignment or transfer
751 as an absolute transfer and true sale and the corresponding
752 characterization of the property interest of the purchaser shall be
753 effective and perfected against all third parties and is not
754 affected or impaired by, among other things, the occurrence of
755 any of the following:

756 (A) Commingling of collected consumer rate relief charges
757 with other amounts;

758 (B) The retention by the seller of any of the following:

759 (i) A partial or residual interest, including an equity interest,
760 in the consumer rate relief property, whether direct or indirect,
761 or whether subordinate or otherwise;

762 (ii) The right to recover costs associated with taxes,
763 franchise fees or license fees imposed on the collection of
764 consumer rate relief charges;

765 (iii) Any recourse that the purchaser or any assignee may
766 have against the seller;

767 (iv) Any indemnification rights, obligations or repurchase
768 rights made or provided by the seller;

769 (v) The obligation of the seller to collect consumer rate relief
770 charges on behalf of an assignee;

771 (vi) The treatment of the sale, assignment or transfer for tax,
772 financial reporting or other purposes; or

773 (vii) Any application of the adjustment mechanism under the
774 final financing order.

775 (q) *Taxation of consumer rate relief charges; consumer rate*
776 *relief bonds not debt of governmental entities or a pledge of*
777 *taxing powers.*

778 (1) The imposition, billing, collection and receipt of
779 consumer rate relief charges under this section are exempt from
780 state income, sales, franchise, gross receipts, business and
781 occupation and other taxes or similar charges: *Provided*, That
782 neither this exemption nor any other provision of this subsection
783 shall preclude any municipality from taxing consumer rate relief
784 charges under the authority granted to municipalities pursuant to
785 sections five and five-a of article thirteen in chapter eight of this
786 code.

787 (2) Consumer rate relief bonds issued under a final financing
788 order do not constitute a debt or a pledge of the faith and credit
789 or taxing power of this state or of any county, municipality or
790 any other political subdivision of this state. Bondholders have no
791 right to have taxes levied by this state or the taxing authority of
792 any county, municipality or any other political subdivision of
793 this state for the payment of the principal of or interest on the
794 bonds. The issuance of consumer rate relief bonds does not,
795 directly, indirectly or contingently, obligate this state or a
796 county, municipality or political subdivision of this state to levy

797 a tax or make an appropriation for payment of the principal of or
798 interest on the bonds.

799 (r) *Consumer rate relief bonds as legal investments.* Any of
800 the following may legally invest any sinking funds, moneys or
801 other funds belonging to them or under their control in consumer
802 rate relief bonds:

803 (1) The state, the West Virginia Investment Management
804 Board, the West Virginia Housing Development Fund, municipal
805 corporations, political subdivisions, public bodies and public
806 officers except for members of the Public Service Commission;

807 (2) Banks and bankers, savings and loan associations, credit
808 unions, trust companies, building and loan associations, savings
809 banks and institutions, deposit guarantee associations,
810 investment companies, insurance companies and associations
811 and other persons carrying on a banking or insurance business,
812 including domestic for life and domestic not for life insurance
813 companies; and

814 (3) Personal representatives, guardians, trustees and other
815 fiduciaries.

816 (s) *Pledge of state.*

817 (1) The state pledges to and agrees with the bondholders,
818 assignees and financing parties under a final financing order that
819 the state will not take or permit any action that impairs the value
820 of consumer rate relief property under the final financing order
821 or revises the consumer rate relief costs for which recovery is
822 authorized under the final financing order or, except as allowed
823 under subsection (k) of this section, reduce, alter or impair
824 consumer rate relief charges that are imposed, charged, collected
825 or remitted for the benefit of the bondholders, assignees and
826 financing parties, until any principal, interest and redemption
827 premium in respect of consumer rate relief bonds, all financing

828 costs and all amounts to be paid to an assignee or financing party
829 under an ancillary agreement are paid or performed in full.

830 (2) A person who issues consumer rate relief bonds is
831 permitted to include the pledge specified in subdivision (1) of
832 this subsection in the consumer rate relief bonds, ancillary
833 agreements and documentation related to the issuance and
834 marketing of the consumer rate relief bonds.

835 (t) *West Virginia law governs; this section controls.*

836 (1) The law governing the validity, enforceability,
837 attachment, perfection, priority and exercise of remedies with
838 respect to the transfer of consumer rate relief property under a
839 final financing order, the creation of a security interest in any
840 such property, consumer rate relief charges or final financing
841 order are the laws of this state as set forth in this section.

842 (2) This section controls in the event of a conflict between
843 its provisions and any other law regarding the attachment,
844 assignment, or perfection, the effect of perfection or priority of
845 any security interest in or transfer of consumer rate relief
846 property under a final financing order.

847 (u) *Severability.*

848 If any provision of this section or the application thereof to
849 any person, circumstance or transaction is held by a court of
850 competent jurisdiction to be unconstitutional or invalid, the
851 unconstitutionality or invalidity does not affect the
852 Constitutionality or validity of any other provision of this section
853 or its application or validity to any person, circumstance or
854 transaction, including, without limitation, the irrevocability of a
855 financing order issued pursuant to this section, the validity of the
856 issuance of consumer rate relief bonds, the imposition of
857 consumer rate relief charges, the transfer or assignment of
858 consumer rate relief property or the collection and recovery of

859 consumer rate relief charges. To these ends, the Legislature
860 hereby declares that the provisions of this section are intended to
861 be severable and that the Legislature would have enacted this
862 section even if any provision of this section held to be
863 unconstitutional or invalid had not been included in this section.

864 (v) *Non-utility status.*

865 An assignee or financing party is not an electric public utility
866 or person providing electric service by virtue of engaging in the
867 transactions with respect to consumer rate relief bonds.

CHAPTER 163

(S. B. 82 - By Senators Snyder, Blair and Unger)

[Passed April 13, 2013; in effect July 1, 2013.]

[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact § 16-13A-3 and § 16-13A-4 of the Code of West Virginia, 1931, as amended, all relating to public service district board membership; requiring a public service board to have at least one rate-paying residential customer of the public service district on the board; increasing the salary of public service district board members; clarifying when salary and expenses payments may be made; and adding sewer service to the salary schedule for public service districts which contract with others to provide service.

Be it enacted by the Legislature of West Virginia:

That § 16-13A-3 and § 16-13A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.**§16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.**

1 From and after the date of the adoption of the order creating
2 any public service district, it is a public corporation and political
3 subdivision of the state, but without any power to levy or collect
4 ad valorem taxes. Each district may acquire, own and hold
5 property, both real and personal, in its corporate name, and may
6 sue, may be sued, may adopt an official seal and may enter into
7 contracts necessary or incidental to its purposes, including
8 contracts with any city, incorporated town or other municipal
9 corporation located within or without its boundaries for
10 furnishing wholesale supply of water for the distribution system
11 of the city, town or other municipal corporation, or for
12 furnishing storm water services for the city, town or other
13 municipal corporation, and contract for the operation,
14 maintenance, servicing, repair and extension of any properties
15 owned by it or for the operation and improvement or extension
16 by the district of all or any part of the existing municipally
17 owned public service properties of any city, incorporated town
18 or other municipal corporation included within the district:
19 *Provided*, That no contract shall extend beyond a maximum of
20 forty years, but provisions may be included therein for a renewal
21 or successive renewals thereof and shall conform to and comply
22 with the rights of the holders of any outstanding bonds issued by
23 the municipalities for the public service properties.

24 The powers of each public service district shall be vested in
25 and exercised by a public service board consisting of not less
26 than three members who shall be persons residing within the
27 district, who possess certain educational, business or work
28 experience which will be conducive to operating a public service
29 district. In the event the public service district is providing any
30 utility service and billing rates and charges to its customers, at

31 least one board member shall be a rate-paying residential
32 customer of the public service district: *Provided*, That if an
33 existing public service board does not have a member who is a
34 rate-paying residential customer of the public service district on
35 July 1, 2013, the next following appointment to the board shall
36 be a rate-paying residential customer of that public service
37 district. For purposes of this section, "rate-paying residential
38 customer" means a person who:

39 (1) In the case of a water or sewer public service district, is
40 physically connected to and actively receiving residential public
41 service district utility services; or

42 (2) In the case of a storm water public service district, has
43 storm water conveyed away from the residential property by a
44 utility owned system; and

45 (3) Has an active account in good standing and is the
46 occupier of the residential property which is on the public
47 service district utility service account.

48 Each board member shall, within six months of taking office,
49 successfully complete the training program to be established and
50 administered by the Public Service Commission in conjunction
51 with the Department of Environmental Protection and the Bureau
52 for Public Health. Board members shall not be or become
53 pecuniarily interested, directly or indirectly, in the proceeds of
54 any contract or service, or in furnishing any supplies or materials
55 to the district nor shall a former board member be hired by the
56 district in any capacity within a minimum of twelve months after
57 board member's term has expired or such board member has
58 resigned from the district board. The members shall be appointed
59 in the following manner:

60 Each city, incorporated town or other municipal corporation
61 having a population of more than three thousand but less than

62 eighteen thousand is entitled to appoint one member of the
63 board, and each city, incorporated town or other municipal
64 corporation having a population in excess of eighteen thousand
65 shall be entitled to appoint one additional member of the board
66 for each additional eighteen thousand population. The members
67 of the board representing such cities, incorporated towns or other
68 municipal corporations shall be residents thereof and shall be
69 appointed by a resolution of the governing bodies thereof and
70 upon the filing of a certified copy or copies of the resolution or
71 resolutions in the office of the clerk of the county commission
72 which entered the order creating the district, the persons so
73 appointed become members of the board without any further act
74 or proceedings. If the number of members of the board so
75 appointed by the governing bodies of cities, incorporated towns
76 or other municipal corporations included in the district equals or
77 exceeds three, then no further members shall be appointed to the
78 board and the members so appointed are the board of the district
79 except in cases of merger or consolidation where the number of
80 board members may equal five.

81 If no city, incorporated town or other municipal corporation
82 having a population of more than three thousand is included
83 within the district, then the county commission which entered
84 the order creating the district shall appoint three members of the
85 board, who are persons residing within the district and residing
86 within the State of West Virginia, which three members become
87 members of the board of the district without any further act or
88 proceedings except in cases of merger or consolidation where the
89 number of board members may equal five.

90 If the number of members of the board appointed by the
91 governing bodies of cities, incorporated towns or other
92 municipal corporations included within the district is less than
93 three, then the county commission which entered the order
94 creating the district shall appoint such additional member or
95 members of the board, who are persons residing within the

96 district, as is necessary to make the number of members of the
97 board equal three except in cases of merger or consolidation
98 where the number of board members may equal five, and the
99 member or members appointed by the governing bodies of the
100 cities, incorporated towns or other municipal corporations
101 included within the district and the additional member or
102 members appointed by the county commission as aforesaid, are
103 the board of the district. A person may serve as a member of the
104 board in one or more public service districts.

105 The population of any city, incorporated town or other
106 municipal corporation, for the purpose of determining the
107 number of members of the board, if any, to be appointed by the
108 governing body or bodies thereof, is the population stated for
109 such city, incorporated town or other municipal corporation in
110 the last official federal census.

111 Notwithstanding any provision of this code to the contrary,
112 whenever a district is consolidated or merged pursuant to section
113 two of this article, the terms of office of the existing board
114 members shall end on the effective date of the merger or
115 consolidation. The county commission shall appoint a new board
116 according to rules promulgated by the Public Service
117 Commission. Whenever districts are consolidated or merged no
118 provision of this code prohibits the expansion of membership on
119 the new board to five.

120 The respective terms of office of the members of the first
121 board shall be fixed by the county commission and shall be as
122 equally divided as may be, that is approximately one third of the
123 members for a term of two years, a like number for a term of
124 four years, the term of the remaining member or members for six
125 years, from the first day of the month during which the
126 appointments are made. The first members of the board
127 appointed as aforesaid shall meet at the office of the clerk of the
128 county commission which entered the order creating the district

129 as soon as practicable after the appointments and shall qualify by
130 taking an oath of office: *Provided*, That any member or members
131 of the board may be removed from their respective office as
132 provided in section three-a of this article.

133 Any vacancy shall be filled for the unexpired term within
134 thirty days; otherwise successor members of the board shall be
135 appointed for terms of six years and the terms of office shall
136 continue until successors have been appointed and qualified. All
137 successor members shall be appointed in the same manner as the
138 member succeeded was appointed. The district shall provide to
139 the Public Service Commission, within thirty days of the
140 appointment, the following information: The new board
141 member's name, home address, home and office phone numbers,
142 date of appointment, length of term, who the new member
143 replaces and if the new appointee has previously served on the
144 board. The Public Service Commission shall notify each new
145 board member of the legal obligation to attend training as
146 prescribed in this section.

147 The board shall organize within thirty days following the
148 first appointments and annually thereafter at its first meeting
149 after January 1 of each year by selecting one of its members to
150 serve as chair and by appointing a secretary and a treasurer who
151 need not be members of the board. The secretary shall keep a
152 record of all proceedings of the board which shall be available
153 for inspection as other public records. Duplicate records shall be
154 filed with the county commission and shall include the minutes
155 of all board meetings. The treasurer is lawful custodian of all
156 funds of the public service district and shall pay same out on
157 orders authorized or approved by the board. The secretary and
158 treasurer shall perform other duties appertaining to the affairs of
159 the district and shall receive salaries as shall be prescribed by the
160 board. The treasurer shall furnish bond in an amount to be fixed
161 by the board for the use and benefit of the district.

162 The members of the board, and the chair, secretary and
163 treasurer thereof, shall make available to the county commission,
164 at all times, all of its books and records pertaining to the
165 district's operation, finances and affairs, for inspection and audit.
166 The board shall meet at least monthly.

**§16-13A-4. Board chairman; members' compensation; procedure;
district name.**

1 (a) The chairman shall preside at all meetings of the board
2 and may vote as any other member of the board. If the chairman
3 is absent from any meeting, the remaining members may select
4 a temporary chairman and if the member selected as chairman
5 resigns as such or ceases for any reason to be a member of the
6 board, the board shall select one of its members as chairman to
7 serve until the next annual organization meeting.

8 (b) Salaries of the board members are:

9 (1) For districts with fewer than six hundred customers, up
10 to \$100 per attendance at regular monthly meetings and \$75 per
11 attendance at additional special meetings, total salary not to
12 exceed \$2,000 per annum;

13 (2) For districts with six hundred customers or more but
14 fewer than two thousand customers, up to \$125 per attendance
15 at regular monthly meetings and \$100 per attendance at
16 additional special meetings, total salary not to exceed \$3,250 per
17 annum;

18 (3) For districts with two thousand customers or more, but
19 fewer than four thousand customers, up to \$150 per attendance
20 at regular monthly meetings and \$100 per attendance at
21 additional special meetings, total salary not to exceed \$4,500 per
22 annum; and

23 (4) For districts with four thousand or more customers, up to
24 \$200 per attendance at regular monthly meetings and \$150 per
25 attendance at additional special meetings, total salary not to
26 exceed \$6,400 per annum.

27 The public service district shall certify the number of
28 customers served to the Public Service Commission on July 1 of
29 each fiscal year.

30 (c) Public service districts selling water to other water
31 utilities for resale or public service districts which provide sewer
32 treatment for other sewer utilities may adopt the following
33 salaries for its board members:

34 (1) For districts with annual revenues of less than \$50,000,
35 up to \$100 per attendance at regular monthly meetings and \$75
36 per attendance at additional special meetings, total salary not to
37 exceed \$2,000 per annum;

38 (2) For districts with annual revenues of \$50,000 or more,
39 but less than \$250,000, up to \$125 per attendance at regular
40 monthly meetings and \$100 per attendance at special meetings,
41 total salary not to exceed \$3,250 per annum;

42 (3) For districts with annual revenues of \$250,000 or more,
43 but less than \$500,000, up to \$150 per attendance at regular
44 monthly meetings and \$100 per attendance at additional special
45 meetings, total salary not to exceed \$4,500 per annum; and

46 (4) For districts with annual revenues of \$500,000 or more,
47 up to \$200 per attendance at regular monthly meetings and \$150
48 per attendance at additional special meetings, total salary not to
49 exceed \$6,400 per annum.

50 The public service district shall certify the number of
51 customers served and its annual revenue to the Public Service
52 Commission on July 1 of each fiscal year.

53 (d) Board members may be reimbursed for all reasonable
54 and necessary expenses actually incurred in the performance of
55 their duties as provided by the rules of the board.
56 Notwithstanding any other provision of this code to the contrary,
57 board members are not eligible for salary payment or
58 reimbursement for expenses incurred prior to the public service
59 district initiating service to its first customer. Salary and
60 reimbursement for expenses may be incurred only at meetings
61 occurring after the public service district initiated service to
62 customers.

63 (e) The board shall by resolution determine its own rules of
64 procedure, fix the time and place of its meetings and the manner
65 in which special meetings may be called. Public notice of
66 meetings shall be given in accordance with section three, article
67 nine-a, chapter six of this code. Emergency meetings may be
68 called as provided by that section. A majority of the members
69 constituting the board also constitute a quorum to do business.

70 (f) The members of the board are not personally liable or
71 responsible for any obligations of the district or the board, but
72 are answerable only for willful misconduct in the performance
73 of their duties. The county commission which created a district
74 or county commissions if more than one created the district may,
75 upon written request of the district, adopt an order changing the
76 official name of a public service district: *Provided*, That the
77 name change will not be effective until approved by the Public
78 Service Commission of West Virginia and the owners of any
79 bonds and notes issued by the district, if any, shall have
80 consented, in writing, to the name change. If a district includes
81 territory located in more than one county, the county
82 commission or county commissions changing the name of the
83 district shall provide any county commission into which the
84 district also extends with a certified copy of the order changing
85 the name of the district. The official name of any district created
86 under the provisions of this article may contain the name or

87 names of any city, incorporated town or other municipal
88 corporation included therein or the name of any county or
89 counties in which it is located.

CHAPTER 164

**(S. B. 491 - By Senators M. Hall, Beach, Carmichael,
Kessler (Mr. President), McCabe and Walters)**

[Passed April 11, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17A-6D-16, relating to daily passenger rental car business; and allowing rental vehicle contracts to include a vehicle licensing cost recovery fee.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §17A-6D-16, to read as follows:

ARTICLE 6D. DAILY PASSENGER RENTAL CAR BUSINESS.

§17A-6D-16. Vehicle license cost recovery fee charged by daily passenger rental car company.

1 (a) As used in this section:

2 (1) "Vehicle license costs" means the costs incurred by a
3 daily passenger rental car company for licensing, titling,
4 registration, property tax, plating and inspecting rental motor
5 vehicles; and

6 (2) "Vehicle license cost recovery fee" means a charge on a
7 vehicle rental transaction originating within this state that may
8 be separately stated on the rental agreement to recover vehicle
9 license costs.

10 (b) *Method for vehicle cost recovery.* –

11 (1) If a daily passenger car rental company includes a
12 vehicle license cost recovery fee as a separately stated charge in
13 a rental transaction, the amount of the fee shall represent the
14 company's good-faith estimate of the daily passenger rental car
15 daily charge to recover its actual total annual vehicle license
16 costs.

17 (2) If the total amount of the vehicle license cost recovery
18 fees collected by a daily passenger rental car company under this
19 section in any calendar year exceeds the company's actual
20 vehicle license costs, the daily passenger car rental company
21 shall:

22 (A) Retain the excess amount; and

23 (B) Adjust the vehicle cost recovery fee for the following
24 calendar year by a corresponding amount.

25 (c) Nothing in this section prevents a daily passenger car
26 rental company from including, or making adjustments during
27 the calendar year to, separately stated surcharges, fees or charges
28 in the rental agreement, which may include, but are not limited
29 to, vehicle license cost recovery fees, airport access fees, airport
30 concession fees, consolidated facility charges and all applicable
31 taxes.

CHAPTER 165

**(Com. Sub. for H. B. 2600 - By Delegates Hartman,
McCuskey, Campbell, Miley, E. Nelson, Sponaugle,
Skaff and Lynch)**

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §7-25-1, §7-25-2, §7-25-3, §7-25-4, §7-25-5, §7-25-6, §7-25-7, §7-25-8, §7-25-9, §7-25-10, §7-25-11, §7-25-12, §7-25-13, §7-25-14, §7-25-15, §7-25-16, §7-25-17, §7-25-18, §7-25-19, §7-25-20, §7-25-21, §7-25-22, §7-25-23, §7-25-24, §7-25-25 and §7-25-26; and to amend and reenact §30-29-1 of said code, all relating to the creation of resort area districts; providing short title for article; providing legislative findings for resort area districts; defining terms; authorizing county commissions to create resort area districts; providing for petition process for creation or expansion of resort area districts; providing notice requirements for creation or expansion of resort area districts; providing that resort area districts are public corporations; setting forth powers of resort area districts; authorizing resort area districts to undertake capital projects; authorizing resort area districts to levy assessments upon real property; authorizing resort area districts to borrow money and incur indebtedness; authorizing resort area districts to issue assessment bonds and resort service fee bonds; authorizing resort area districts to impose penalties for unpaid assessments; authorizing resort area districts to levy resort service fee on purchases of certain goods and services; authorizing resort area districts to provide public services; authorizing resort area districts to provide for public safety and appoint resort area rangers; providing for official name of resort area districts; providing for creation of resort area boards; setting forth powers

and certain procedures for resort area boards; providing for election of resort area board members; providing election procedures for resort area boards; requiring certain resort area board members to give bond; providing notice requirements for resort area boards election; providing procedures and notice requirements for resort service fee implementation and administration; providing procedures for implementing and providing services within resort area districts; requiring adoption of budget annually; providing resort area district board ability to condition budgeted expenditures, projects and undertakings on the receipt and availability of additional funds provided by resort operator or other sources; providing procedures for implementation of assessments; providing notice requirements for assessments; providing procedures for construction of capital projects; providing procedures for revision of assessments; exempting public property from assessments; providing terms for assessment bonds and resort service fee bonds; exempting assessment bonds and resort service fee bonds from state taxation; providing that indebtedness of resort area district to be paid solely from resort service fee and assessments; providing procedure for payment of assessments to sheriff; authorizing sheriff to collect delinquent assessments; providing for lien against property subject to assessment and notice thereof; providing for appointment of resort area rangers; authorizing resort area rangers to exercise authority of law-enforcement officers; requiring annual audit of resort area districts; requiring notice of change of ownership of properties within district; reasonable notice by district in absence of receiving notice of change in ownership; providing for liberal construction of article; providing that resort area rangers are considered law-enforcement officers; and making resort area rangers subject to same training and requirements as other law-enforcement officers.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §7-25-1, §7-25-2, §7-25-3,

§7-25-4, §7-25-5, §7-25-6, §7-25-7, §7-25-8, §7-25-9, §7-25-10, §7-25-11, §7-25-12, §7-25-13, §7-25-14, §7-25-15, §7-25-16, §7-25-17, §7-25-18, §7-25-19, §7-25-20, §7-25-21, §7-25-22, §7-25-23, §7-25-24, §7-25-25 and §7-25-26; and that §30-29-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 25. RESORT AREA DISTRICTS.

§7-25-1. Short Title.

- 1 This article shall be known and cited as the “Resort Area
- 2 District Act”.

§7-25-2. Findings.

- 1 The Legislature finds that:
- 2 (a) West Virginia’s resorts and other recreational areas have
- 3 an important role in the economy of the local areas surrounding
- 4 their locations.
- 5 (b) West Virginia’s resorts and other recreational areas are
- 6 often located in unincorporated areas and, as a consequence,
- 7 such areas have less funding available to provide infrastructure
- 8 and essential services within such areas.
- 9 (c) West Virginia’s resorts and other recreational areas
- 10 derive the major portion of their economic well-being from
- 11 businesses catering to the recreational and personal needs of
- 12 persons traveling to or through the area.
- 13 (d) Better infrastructure and provision of essential services
- 14 to West Virginia’s resorts and other recreational areas are likely
- 15 to increase visits to such areas, which will result in greater
- 16 economic development and job creation in such areas.

17 (e) The state and the public will benefit from granting West
18 Virginia's resorts and recreational areas the ability to have a
19 governing body to provide for the infrastructure and essential
20 services within common areas; which common areas are separate
21 from the profit-making operations of the resorts or recreational
22 areas.

23 (f) This article is necessary for the public health, safety and
24 welfare and economic development of West Virginia's resorts
25 and other recreational areas.

§7-25-3. Definitions.

1 For purposes of this article:

2 (a) "Assessment" means the fee, including interest, paid by
3 an owner of real property located within a resort area district to
4 pay for the cost of a project or projects constructed upon or
5 benefitting or protecting such property and administrative
6 expenses thereto, which fee is in addition to all taxes and other
7 fees levied on the property.

8 (b) "Assessment bonds" means special obligation bonds or
9 notes issued by a resort area district which are payable from the
10 proceeds of assessments.

11 (c) "Board" means a resort area board created pursuant to
12 this article.

13 (d) "Code" means the Code of West Virginia, 1931, as
14 amended by the Legislature.

15 (e) "Cost" means the cost of any or all of the following:

16 (1) Providing services within a resort area district;

17 (2) Construction, reconstruction, renovation and acquisition
18 of all lands, structures, real or personal property, rights,

19 rights-of-way, franchises, easements and interests acquired or to
20 be acquired by a resort area district;

21 (3) All machinery and equipment, including machinery and
22 equipment needed to provide, expand or enhance services to a
23 resort area district;

24 (4) Financing charges and interest prior to and during
25 construction and, if deemed advisable by a resort area district,
26 for a limited period after completion of construction;

27 (5) Interest and reserves for principal and interest, including
28 costs of bond insurance and any other type of financial
29 guarantee;

30 (6) Costs of issuance in connection with the issuance of
31 assessment bonds or resort service fee bonds;

32 (7) The design of extensions, enlargements, additions and
33 improvements to the facilities of a resort area district;

34 (8) Architectural, engineering, financial and legal services;

35 (9) Plans, specifications, studies, surveys and estimates of
36 costs and revenues;

37 (10) Administrative expenses necessary or incident to any
38 project or service; and

39 (11) Other expenses as may be necessary or incident to the
40 provision of services or the construction, acquisition and
41 financing of a project.

42 (f) "Governing body" means the county commission of a
43 county.

44 (g) "Governmental agency" means the state government or
45 any agency, department, division or unit thereof; counties;

46 municipalities; any watershed enhancement districts, soil
47 conservation districts, sanitary districts, public service districts,
48 drainage districts, school districts, urban renewal authorities or
49 regional governmental authorities established pursuant to this
50 code.

51 (h) "Landowner" or "owner of real property" means the
52 person or persons holding an interest in the record fee title to one
53 or more parcels of real property, including residential, improved
54 real property and unimproved, developable real property, or of
55 units within a multiunit property, including condominiums and
56 townhouses, within a resort area district or a proposed resort area
57 district: *Provided*, That the holder or holders of a deed of trust
58 shall not be considered a landowner or owner of real property.

59 (i) "Parcel" shall mean:

60 (1) A lot or parcel of real property as set forth on a plat
61 covering such real property, or, in the event no plat exists, as set
62 forth on the tax maps of a county; or

63 (2) A unit within a multiunit property.

64 (j) "Person" means an individual, firm, partnership,
65 corporation, limited liability company, voluntary association or
66 any other type of entity.

67 (k) "Project" means the design, construction, reconstruction,
68 establishment, acquisition, improvement, renovation, extension,
69 enlargement, equipping, maintenance, repair (including
70 replacements) and start-up operation of public buildings,
71 culverts, streets, bridges (including approaches, causeways,
72 viaducts, underpasses and connecting roadways), motor vehicle
73 parking facilities (including parking lots, buildings, ramps,
74 curb-line parking, meters and other facilities deemed necessary,
75 appropriate, useful, convenient or incidental to the regulation,

76 control and parking of motor vehicles), public transportation,
77 public recreation centers, public recreation parks, bicycle paths
78 and trails, hiking paths and trails, landscaping, swimming pools,
79 tennis courts, golf courses, skating rinks, equine facilities, motor
80 vehicle competition and recreational facilities, flood protection
81 or relief projects, or the grading, regrading, paving, repaving,
82 surfacing, resurfacing, curbing, recurbing, widening, lighting or
83 otherwise improving any street, avenue, road, highway, alley or
84 way, or the building or renewing of sidewalks and flood
85 protection; and the term shall mean and include any project as a
86 whole, and all integral parts thereof, including all necessary,
87 appropriate, useful, convenient or incidental appurtenances and
88 equipment in connection with any one or more of the above:
89 *Provided*, That a project shall not include a facility or service
90 that benefits only the resort operator, or which the resort operator
91 charges a fee or obtains revenue, or that constitutes part of any
92 facility or service provided by the resort operator, such as a ski
93 lift or ski slope,

94 (I) "Purchase price" means the measure subject to the resort
95 service fee authorized to be imposed by this article and has the
96 same meaning as sales price. For purposes of this article, the
97 purchase price of a good or service shall not include the taxes
98 levied under articles fifteen or fifteen-a of chapter eleven of this
99 code or any other provision of law.

100 (m) "Ranger" means a resort area ranger.

101 (u) "Resort area" means an area that:

102 (1) Is an unincorporated area with a contiguous geographic
103 boundary within one county that has been defined by the process
104 set forth in this article;

105 (2) Has a permanent population of less than two thousand
106 people, according to the most recent federal census;

107 (3) Derives the major portion of its economic well-being
108 from businesses catering to the recreational and personal needs
109 of persons traveling to or through the area;

110 (4) Is a destination location containing each of the following:

111 (i) Residential, improved real property;

112 (ii) One or more resort operators;

113 (iii) Commercial business properties such as retail stores,
114 restaurants and hotels or other lodging accommodations; and

115 (iv) Unimproved real property which remains developable;

116 (5) Does not include real property primarily used for
117 manufacturing, milling, converting, producing, processing or
118 fabricating materials, generating electricity or the extraction or
119 processing of minerals.

120 (o) "Resort area district" or "district" means a resort area
121 district created pursuant to this article.

122 (p) "Resort operator" means any person owning and
123 operating the primary outdoor recreational facilities in a resort
124 area and offering outdoor recreational services such as skiing,
125 golf or boating to the general public.

126 (q) "Resort service fee" means the fee imposed on the
127 purchase price of goods and services sold within a resort area
128 district by any of the following establishments:

129 (1) Hotels, motels, campgrounds, lodges and other lodging
130 or camping facilities;

131 (2) Restaurants, fast-food stores, and other food service
132 establishments selling prepared foods;

133 (3) Taverns, bars, nightclubs, lounges and other public
134 establishments that serve beer, wine, liquor or other alcoholic
135 beverages by the drink;

136 (4) Retail establishments;

137 (5) Entertainment facilities, including, but not limited to,
138 theaters, amphitheatres, halls and stadiums; and

139 (6) Recreational facilities and activities, including, but not
140 limited to, ski resorts, golf courses, water sports, rafting,
141 canoeing, kayaking, rock climbing and zip lines.

142 (r) "Resort service fee bonds" means special obligation
143 bonds or notes issued by a resort area district which are payable
144 from the proceeds of resort service fees.

145 (s) "Service" includes, but is not limited to, snow removal;
146 operation and maintenance of public transportation;
147 maintenance, upgrade and beautification of public common
148 areas; maintenance and repair of roads and sidewalks; providing
149 for the collection and disposal of garbage and other refuse
150 matter; recycling; operation, upgrade and maintenance of any
151 projects or improvements; and any other public service
152 authorized by this article, including fire protection and public
153 safety. For purposes of this article, a common area shall not
154 include any facility that benefits only the resort operator, or for
155 which the resort operator charges a fee or obtains revenue, or
156 which constitutes part of any facility or service provided by the
157 resort operator, such as a ski lift or ski slope.

158 (t) "Sheriff" means the sheriff of the county in which a resort
159 area district is located.

**§7-25-4. Power and authority of county commissions to create and
establish resort area districts.**

1 (a) Every county is hereby empowered and authorized, in
2 addition to any other rights, powers and authority conferred upon

3 it elsewhere in this code, to create, modify, reject or expand
4 resort area districts within that county in the manner hereinafter
5 set forth and to assist in the provision of services and
6 development, construction, acquisition, extension or
7 improvement of a project or projects located within a resort area
8 district.

9 (b) Unless agreed to by each affected municipality, the
10 power and authority hereby conferred on a county shall not
11 extend into territory within the boundaries of any municipality:
12 *Provided*, That notwithstanding any provision in this code to the
13 contrary, the power and authority hereby conferred on counties
14 may extend within the territory of a public service district
15 created under section two, article thirteen-a, chapter sixteen of
16 this code.

**§7-25-5. Petition for creation or expansion of resort area district;
petition requirements.**

1 (a) The owners of at least sixty-one percent of the real
2 property, determined by acreage, located within the boundaries
3 of the resort area described in the petition, by metes and bounds
4 or otherwise in a manner sufficient to describe the area, may
5 petition a governing body to create or expand a resort area
6 district.

7 (b) The petition for the creation or expansion of a resort area
8 district shall include, where applicable, the following:

9 (1) The proposed name and proposed boundaries of such
10 district and a list of the names and addresses of all owners of real
11 property within the proposed district;

12 (2) A description of proposed projects and services to be
13 provided within the district;

14 (3) A map showing the proposed resort area to be included
15 in the resort area district;

- 16 (4) A list of estimated project and service costs;
- 17 (5) A feasibility or consultant study concerning the
18 formation of the proposed district and the funds to be generated
19 by the implementation of a resort service fee and indicating that
20 the proposed resort service fee will provide sufficient revenue
21 for proposed services and projects;
- 22 (6) The proposed rate or rates, not to exceed five percent of
23 the purchase price, of the resort service fee and the proposed
24 classes of goods and services to which each rate shall apply;
- 25 (7) The proposed effective date of the resort service fee;
- 26 (8) A certification from the State Tax Commissioner of the
27 amount of consumers sales and service taxes collected from
28 businesses located in the proposed district during the most recent
29 twelve calendar month period for which such data is available
30 that precedes the calendar quarter during which the petition will
31 be submitted to the governing body;
- 32 (9) A development schedule; and
- 33 (10) A statement of the benefits that can be expected from
34 the creation of the district.
- 35 (c) Within sixty days of the submission of a petition for the
36 creation of a resort area district, the governing body shall by
37 order determine the completeness of the petition. If the
38 governing body determines that the petition is complete, it shall
39 set a date for the public meeting required under section six of
40 this article and shall cause the petition to be filed with the clerk
41 of the governing body and be made available for inspection by
42 interested persons before the meeting. If the governing body
43 determines that such petition is not complete, the petition shall
44 be returned to the petitioners with a statement of additional
45 information required for such petition to be complete.

§7-25-6. Notice to property owners before creation or expansion of resort area district; form of notice; affidavit of publication.

1 (a) Before the adoption of an order creating a resort area
2 district, the governing body shall cause notice to be given to the
3 owners of real property located within the proposed resort area
4 district that such order will be considered for adoption at a public
5 meeting of the governing body at a date, time and place named
6 in the notice and that all persons at that meeting, or any
7 adjournment thereof, shall be given an opportunity to protest or
8 be heard concerning the adoption or rejection of the order. At or
9 after the meeting the governing body may amend, revise or
10 otherwise modify the information in the petition for formation or
11 expansion of a resort area district as it may deem appropriate
12 after taking into account any comments received at such
13 meeting.

14 (b) A resort area district may not be created by a governing
15 body if, at the public meeting required by this section, written
16 protest is filed by at least twenty-five percent of the owners of
17 real property proposed to be included within the district. In the
18 event of a such protest, the petition for the creation of the resort
19 area district may not be resubmitted to the governing body for a
20 period of at least one year from the date of the original
21 submission.

22 (c) At least sixty days prior to the date of the meeting the
23 notice required by this section shall, using reasonable efforts, be
24 mailed to each owner of real property to be included in the
25 proposed resort area district as provided in subsection (g) of this
26 section, posted in multiple, conspicuous public locations within
27 such proposed district and published as a Class II legal
28 advertisement in compliance with the provisions of article three,
29 chapter fifty-nine of this code and the publication area for such
30 publication shall be the county in which the proposed resort area

31 district is located. The notice shall be in the form of, or
32 substantially in the form of, the following notice:

33 "NOTICE TO ALL PERSONS OWNING PROPERTY
34 LOCATED WITHIN (here describe the
35 boundaries of the proposed resort area district) IN THE
36 COUNTY OF (name of county):

37 A petition has been presented to the county commission of
38 the County of (name of county) requesting
39 establishment of a resort area district and authorization of a
40 resort service fee under article twenty-five, chapter seven of the
41 code of West Virginia, 1931, as amended, to
42 (describe potential projects and/or services to be provided) in the
43 county of (name of county) as the county
44 commission may deem proper. A copy of the petition is available
45 in the office of the clerk of the county commission of the County
46 of (name of county) for review by the public
47 during regular office hours.

48 The petition to create a resort area district will be considered
49 by the county commission at a public meeting to be held on the
50 day of,, at ... m. at
51 Any owner of real property
52 whose property may be affected by the creation of the
53 above-described resort area district, and any owner of real
54 property whose property is not located within said resort area
55 district but wishes his or her property to be included, will be
56 given an opportunity, under oath, to protest or be heard at said
57 meeting or any adjournment thereof:..... (name of clerk)

58 (d) An affidavit of publication of the notice made by
59 newspaper publisher, or a person authorized to do so on behalf
60 of such publisher, and a copy of the notice shall be made part of
61 the minutes of the governing body and spread on its records of
62 the meeting described in the notice. The service of said notice

63 upon all persons owning any interest in any real property located
64 within the proposed resort area district shall conclusively be
65 deemed to have been given upon completion of mailing as
66 provided in subsection (g) of this section and such newspaper
67 publication.

68 (e) The petitioners shall bear the expense of publication of
69 the notice, the meeting and the mailing of the proposed order, as
70 requested by subsection (f) of this section.

71 (f) After the public meeting and before the governing body
72 may adopt an order creating a resort area district, the governing
73 body shall, using reasonable efforts, mail a true copy of the
74 proposed order creating the resort area district to the owners of
75 real property in the proposed district as provided in subsection
76 (g) of this section and shall post copies of such proposed order
77 in multiple, conspicuous public locations within such proposed
78 district. Unless waived in writing, any petitioning owner of real
79 property shall have thirty days from mailing of the proposed
80 order in which to withdraw his or her signature from the petition
81 in writing prior to the vote of the governing body on such order.
82 If any signatures on the petition are so withdrawn, the governing
83 body may adopt the proposed order only upon certification by
84 the petitioners that the petition otherwise continues to meet the
85 requirements of this article. If all petitioning owners of real
86 property waive the right to withdraw their signatures from the
87 petition, then the governing body may immediately adopt the
88 order.

89 (g) For purposes of the mailing of each notice to owners of
90 real property required by this section, reasonable efforts shall be
91 made to mail such notice to all owners of real property proposed
92 to be included within such resort area district using the real
93 property tax records and land books of the county in which such
94 proposed district is located and any lists maintained by a resort
95 operator or homeowners association within such proposed

96 district. Such notice shall be also mailed to each president of a
97 homeowners association, if any, located within a proposed
98 district which has registered with a resort operator to receive
99 such information. Immaterial defects in the mailing of such
100 notices shall not affect the validity of such notices.

§7-25-7. Creation of resort area district; resort area district to be a public corporation.

1 (a) Each resort area district shall be created by adoption of
2 an order by the governing body.

3 (b) From and after the date of the adoption of the order
4 creating a resort area district, it shall thereafter be a public
5 corporation, but without any power to levy or collect ad valorem
6 taxes.

§7-25-8. Powers of resort area district.

1 Each resort area district may:

2 (a) Have and use a corporate seal, and alter the same;

3 (b) Sue and be sued, and be a party to suits, actions and
4 proceedings;

5 (c) Purchase insurance;

6 (d) Enter into agreements, contracts or other transactions
7 with any person or governmental agency necessary or incident
8 to the provision of services or the development, planning,
9 construction, acquisition or improvement of a project or for the
10 operation, maintenance or disposition of a project or for any
11 other services required by a project, or to carry out any purposes
12 of the district;

13 (e) Establish a bank account or accounts in its name;

14 (f) Design, plan, finance, develop, construct, acquire, extend,
15 improve and complete a project or projects;

16 (g) Upon following the procedures set forth in this article,
17 assess the cost of all or any portion of a project on real property
18 located within the resort area district;

19 (h) Accept from any public or private source appropriations,
20 grants, gifts, bequests, devises, loans, contributions and any
21 other benefits available for use in furtherance of district
22 purposes, and to use or dispose of the same to carry out district
23 purposes;

24 (i) Expend funds to pay the costs of providing services
25 within the district and to acquire, or construct part of a project on
26 property located within or outside of a district, and for any work
27 undertaken thereon, as may be necessary or incident to the
28 completion of a project;

29 (j) Enter into agreements with the county within which the
30 resort area district is located to plan, develop, construct, acquire
31 or improve a project jointly;

32 (k) Borrow money and incur indebtedness and other
33 obligations and evidence the same by certificates, notes or
34 debentures: *Provided*, That such indebtedness shall not exceed
35 the annual budget for the Resort area district without the
36 approval of the property owners at a meeting called for such
37 purpose, a majority of those voting shall constitute approval.
38 Voting may be in person, by mailed ballot, by proxy or by
39 electronic means;

40 (l) Raise funds by the issuance and sale of assessment bonds
41 and resort service fee bonds: *Provided*, That the source and sales
42 of bonds shall be approved at a meeting of the property owners
43 called for such purpose. A majority of those voting shall

44 constitute approval. Voting at such meeting may be done in
45 person, by mailed ballot, by proxy or by electronic means;

46 (m) Annually, on or before June 7, certify to the sheriff of
47 the county in which the property is located the assessments
48 granted against all property in the district for inclusion in the tax
49 ticket;

50 (n) Charge interest and levy fines and penalties on unpaid
51 assessments;

52 (o) Create and enforce liens for unpaid assessments;

53 (p) Adopt bylaws not inconsistent with law;

54 (q) Implement, administer and collect a resort service fee for
55 the purpose of providing funds for the provision of services and
56 to design, plan, finance, develop, construct, acquire, extend,
57 improve and complete a project or projects within a resort area
58 district;

59 (r) Acquire, own or hold, in its corporate name, real or
60 personal property, including easements and rights-of-way, by
61 purchase, lease, gift or otherwise, within or without a resort area
62 district for district purposes, as well as obtain options for the
63 acquisition of real property;

64 (s) Provide services necessary to protect the health and
65 welfare of residents in a resort area district and the value of
66 property therein and to enter into agreements with any
67 governmental agency, public or private agency, institution or
68 person for the furnishing of such services;

69 (t) Provide for fire protection service;

70 (u) Provide for the public safety, including the appointment
71 of resort area rangers;

72 (v) Provide for public recreation by means of parks,
73 including, but not limited to, playgrounds, golf courses,
74 swimming pools, skating rinks or recreation buildings;

75 (w) Provide for the opening, widening, extending,
76 straightening and surfacing in whole, or in part of, any street and
77 snow removal or clearance for the same or other roads or streets;

78 (x) Provide for the construction and improvement of street
79 lights, bridges, culverts, curbs, gutters, drains and works
80 incidental to any street improvement; and

81 (y) Do any and all other things necessary to carry out the
82 purposes of this article and not in violation of the Constitution of
83 this state as may be necessary or incident to the provision of
84 services or the construction and completion of a project.

§7-25-9. Official name of resort area districts.

1 The official name of a resort area district created under the
2 provisions of this article may contain the name of the resort area
3 or county in which it is located.

§7-25-10. Resort area boards.

1 (a) The powers of each resort area district shall be vested in
2 and exercised by a resort area board which shall be composed of
3 seven members, the composition of which shall be as set forth in
4 subsection (b) of this section. Board members need not be
5 residents of the district or landowners, except where specifically
6 required otherwise. For purposes of this section, "residential,
7 improved real property" includes, but is not limited to,
8 condominium units, townhouses and single-family residences.

9 (b) The composition of a resort area board shall be as
10 follows:

11 (1) Three board members shall be owners of or
12 representatives of owners of residential, improved real property
13 located within the resort area district;

14 (2) Two board members shall be representatives of the resort
15 operator or operators located within the resort area district;

16 (3) One board member shall be an owner or a representative
17 of owners of commercial business property located within the
18 resort area district; and

19 (4) One board member shall be an owner or a representative
20 of owners of unimproved, developable real property located
21 within the resort area district.

22 (c) For purposes of this section, if a parcel of real property
23 is owned by one or more entities (such as a corporation, limited
24 liability companies, or other entity), then the following are also
25 eligible to serve on the board as an owner with respect to such
26 parcel: (1) Any person having an ultimate beneficial interest in
27 the parcel, whether directly or indirectly and regardless of the
28 number of intermediate ownership entities; and (2) any person
29 designated at the outset of the election as authorized, by an
30 owning entity, to serve on the board as an owner for that
31 particular parcel. Nothing in this provision, however, creates any
32 additional voting rights to the owners of a single parcel of real
33 property, and each parcel of real property shall be entitled to
34 only one vote, regardless of the number of owners participating
35 in ownership of the parcel. Furthermore, nothing in this
36 provision authorizes the owners of real property of one type
37 (such as the resort operator, owners of residential improved real
38 estate, or owners of unimproved, developable real estate) to vote
39 regarding a board position reserved to another ownership
40 category.

41 (d) The board members shall be elected for terms of four
42 years each and thereafter until their respective successors have

43 been elected and have been qualified, except, that of the board
44 members elected at the initial election meeting, two shall serve
45 for a term of two years, two shall serve for a term of three years
46 and three shall serve for a term of four years. At the first meeting
47 of the board, the board members shall determine by lot which of
48 them shall serve the terms less than four years. Each succeeding
49 term is four years. Board members may be reelected for any
50 number of terms. In the event a board member who is required
51 to own real property within the district to be eligible for such
52 board position no longer owns real property within the district,
53 such member may serve out the remainder of his or her term.

54 (e) Only owners of real property, including owners of
55 commercial business property, located within the district shall be
56 eligible to vote in elections for board members.

57 (f) Elections for board members shall be held in accordance
58 with bylaws adopted by the board, but section eleven of this
59 article shall govern the initial election of board members. Voting
60 shall be in person, by mailed ballot, by proxy or by electronic
61 means. The voting restrictions set forth in subsections (d) and (e)
62 of section eleven of this article shall apply to all board elections
63 and may not be altered.

64 (g) Before entering upon the performance of his or her
65 duties, each member shall take and subscribe to the oath required
66 by Section five, Article IV of the Constitution of this state.

67 (h) In the event that a board vacancy arises before the
68 scheduled end of a board member's term, vacancies on the board
69 shall be filled for the remainder of the unexpired term of the
70 member whose office shall be vacant and such appointment,
71 pursuant to the procedures set forth in subsection (r) of this
72 section. Any board member may be removed by the board in
73 case of incompetency, neglect of duty, gross immorality or
74 malfeasance in office, upon a unanimous vote of the remaining

75 six board members. A vote of four board members is sufficient
76 to schedule and conduct an election to fill an unexpired board
77 member's term. Any other action of the board taken while one
78 or more board positions are vacant must be unanimously
79 approved by a board which is comprised of at least six active
80 serving board members.

81 (i) The board shall organize within thirty days following the
82 first election of board members and annually thereafter at its first
83 meeting after January 1, of each year by selecting one of its
84 members to serve as chairman, one to serve as treasurer and one
85 to serve as secretary. The secretary, or his or her designee, shall
86 keep a record of all proceedings of the board which shall be
87 available for inspection as other public records and the
88 Treasurer, or his or her designee, shall maintain records of all
89 financial matters relating to the resort area district, which shall
90 also be made available for inspection as other public records.
91 The secretary and treasurer shall perform such other duties
92 pertaining to the affairs of the resort area district as shall be
93 prescribed by the board.

94 (j) The initial board shall adopt bylaws for the district;
95 *Provided, That* the adoption of such bylaws and any subsequent
96 amendments thereto shall require approval by six sevenths of the
97 board.

98 (k) The members of the board, and the chairman, secretary
99 and treasurer thereof, shall make available, at all reasonable
100 times and upon reasonable notice, all of its books and records
101 pertaining to the resort area district's operation, finances and
102 affairs for inspection and audit. The board shall meet at least
103 semiannually.

104 (l) A majority of the members of the board constitutes a
105 quorum and meetings shall be held at the call of the chairman.

106 Board members may vote either in person, by telephone or by
107 electronic means.

108 (m) Staff, office facilities and costs of operation of the board
109 may be provided by the county which created the resort area
110 district or by contract and said costs of operations shall be
111 funded from resort service fees collected within the district or
112 any other source.

113 (n) The chairman shall preside at all meetings of the board
114 and shall vote as any other members of the board, but if he or she
115 should be absent from any meeting the remaining members may
116 select a temporary chairman, and if the member selected as
117 chairman resigns as chairman or ceases for any reason to be a
118 member of the board, the board shall select one of its members
119 to serve as chairman until the next annual organizational
120 meeting.

121 (o) The board shall, by resolution, determine its own rules of
122 procedure, fix the time and place of its meetings and the manner
123 in which special meeting may be called. The members of the
124 board shall not be personally liable or responsible for any
125 obligations of the resort area district or the board but are
126 answerable only for willful misconduct in the performance of
127 their duties.

128 (p) The members of the board shall serve without
129 compensation but shall receive reimbursement for actual and
130 necessary expenses incurred in connection with the performance
131 of their duties.

132 (q) Every board member who handles public funds or
133 property, and every other officer or employee of a resort area
134 district of whom it shall be required, shall, unless otherwise
135 provided by law, give bond, with good security, to be approved
136 by the board, and in such penalty as such board, conditioned

137 upon the faithful discharge of the duties of his or her office or
138 employment and the faithful accounting for and paying over, as
139 required by law, of any funds or property coming into his or her
140 possession.

141 (r) Vacancies on the board shall be filled by a special
142 election within 120 days of the vacancy, on a date specified by
143 the board, which shall not be less than 45 days sooner than
144 publication of notice of the election. The publication process for
145 an election to fill a vacancy shall be the same as set forth in
146 subsections (c), (d) and (e) of section 11 of this article, and only
147 those owners eligible to vote for the board member whose
148 departure from office caused the vacancy shall be eligible to vote
149 to replace the member. Without limiting the foregoing, and by
150 way of example, only owners of improved residential property
151 may vote to fill a vacancy created by the departure from office
152 of a board member elected by that class of owner.
153 Notwithstanding the provisions of this subsection, a vacancy in
154 the office of board as to a board member elected or appointed as
155 a resort operator representative, may be filled by direct
156 appointment of the resort operator, rather than by election, if
157 only one resort operator exists in the district.

**§7-25-11. Election procedure for initial members of resort area
board; subsequent elections; elections and procedures
to fill board vacancies.**

1 (a) Within ninety days of the adoption of the order creating
2 the resort area district, a public meeting shall be held at which
3 elections for the initial members of the board shall be held. Such
4 meeting shall be held at a location within the district not less
5 than twenty days after the publication of the notice required by
6 subsection (b) of this section.

7 (b) Prior to the meeting required by this section, the
8 petitioners for the creation of the resort area district shall, using

9 reasonable efforts, cause notice of the initial election meeting to
10 be given to all owners of real property, including owners of
11 commercial business property, located within the district. Such
12 notice shall be mailed to each owner of real property included in
13 the resort area district as provided in subsection (h) of this
14 section, posted in multiple, conspicuous public locations within
15 such district and published at least thirty days prior to the date of
16 the meeting as a Class II legal advertisement in compliance with
17 the provisions of article three, chapter fifty-nine of this code and
18 the publication area for such publication shall be the resort area
19 district. The notice shall provide, at a minimum, the following
20 information:

21 (1) The purpose of the meeting;

22 (2) Descriptions of the board positions;

23 (3) A statement that only owners of real property, including
24 owners of commercial business property, located within the
25 district are eligible to vote in such election;

26 (4) The location of the meeting; and

27 (5) The date and time of the meeting.

28 (c) At the meeting required by this section, nominations shall
29 be made for each board position. Persons nominated for board
30 positions shall meet the criteria provided for each board position
31 as set forth in subsection (b), section ten of this article.
32 Nominations shall be made for each board position in the
33 following manner:

34 (1) Only owners of residential, improved real property
35 located within the resort area district may nominate persons for
36 the three board positions provided for owners of or
37 representatives of owners of residential, improved real property
38 located within the resort area district;

39 (2) Only representatives of the resort operator or resort
40 operators may nominate persons for the two board positions
41 provided for representatives of the resort operator or resort
42 operators located within the resort area district;

43 (3) Only owners of commercial business property located
44 within the resort area district may nominate persons for the
45 board position provided for an owner of or a representative of
46 owners of commercial business property located within the
47 resort area district; and

48 (4) Only owners of unimproved, developable real property
49 located within the resort area district may nominate persons for
50 the board position provided for an owner of or a representative
51 of owners of unimproved, developable real property located
52 within the resort area district.

53 (d) Following board member nominations, a vote shall be
54 taken by written ballot for board members to be elected, but
55 owners of any class of property may grant proxies to any person
56 to cast the owner's ballot as if the owner were present in person.
57 Voting shall occur in the following manner:

58 (1) Only owners of residential, improved real property
59 located within the resort area district may vote for the three
60 board positions provided for owners of or representatives of
61 owners of residential, improved real property located within the
62 resort area district. Each owner is entitled to one vote per unit or
63 parcel of residential, improved real property he or she owns;

64 (2) Only a representative of each resort operator may vote
65 for the two board positions provided for representatives of the
66 resort operator or resort operators located within the resort area
67 district;

68 (3) Only owners of commercial business property located
69 within the resort area district may vote for the board position

70 provided for an owner of or a representative of owners of
71 commercial business property located within the resort area
72 district. Each owner is entitled to one vote per unit of
73 commercial business property he or she owns; and

74 (4) Only owners of unimproved, developable real property
75 located within the resort area may vote for the board position
76 provided for an owner of or a representative of owners of
77 unimproved, developable real property located within the resort
78 area district. Each owner is entitled to one vote per parcel of
79 unimproved, developable real property that he or she owns.

80 (e) For purposes of voting in the initial election and in all
81 subsequent elections for board members:

82 (1) The owners of each parcel or unit of real property are
83 entitled one vote, irrespective of the number of owners of such
84 parcel or unity;

85 (2) Fractional voting shall not be permitted; and

86 (3) The vote pertaining to a parcel or unit shall be cast in
87 accordance with the direction of the person or persons holding
88 the majority interest in such parcel or unit, and in the event there
89 is no majority, such vote shall be forfeited.

90 (f) Each board member shall be elected by a majority of the
91 votes cast for such board position.

92 (g) The petitioners for the creation of the resort area district
93 shall be responsible for the costs of the initial election and
94 meeting required by this section.

95 (h) For purposes of the mailing of notice to owners of real
96 property required by this section, reasonable efforts shall be
97 made to mail such notice to all owners of real property included
98 within such resort area district using the real property tax records

99 and land books of the county in which such district is located and
100 any lists maintained by a resort operator or homeowners
101 association within such district. Such notice shall be also mailed
102 to each president of a homeowners association, if any, located
103 within a district which has registered with a resort operator to
104 receive such information. Immaterial defects in the mailing of
105 such notices shall not affect the validity of such notices.

§7-25-12. Resort area districts authorized to levy resort service fee; procedure for implementation and cessation of resort service fee; abstract and notice of implementing resolution; rate of resort service fee; permissible uses; limitations on imposition.

1 (a) Resort area districts are hereby authorized to impose a
2 resort service fee within such district by following the
3 procedures set forth in this section.

4 (b) No resort service fee shall be implemented within a
5 resort area district without approval by six sevenths of the board.
6 If six sevenths of the board has approved the implementation of
7 a resort service fee, the board shall adopt a resolution specifying
8 the following:

9 (1) The rate or rates of the resort service fee and the classes
10 of goods and services to which each rate shall apply;

11 (2) The services and projects authorized to be funded from
12 the proceeds of the resort service fee; and

13 (3) The effective date of the resort service fee: *Provided*,
14 That the resort service fee shall not take effect less than ninety
15 days following the adoption of the resolution.

16 (c) A board may repeal the resolution authorizing
17 implementation of a resort service fee upon approval by six
18 sevenths of the board: *Provided*, That such resolution may not be

19 repealed if a district has outstanding resort service fee bonds and
20 the terms of such bonds restrict the repeal of such resolution.

21 (d) After the adoption of a resolution regarding
22 implementation of a resort service fee, an abstract of such
23 resolution, determined by the board to contain sufficient
24 information as to give notice of the contents of such resolution,
25 and notice that such resolution has been adopted shall be posted
26 in multiple, conspicuous public locations within such district and
27 published as a Class II legal advertisement in compliance with
28 the provisions of article three, chapter fifty-nine of this code and
29 the publication area for such publication shall be the resort area
30 district.

31 (e) The rate of a resort service fee shall not exceed five
32 percent of the purchase price of the goods or services upon
33 which the resort service fee is levied: *Provided*, That a district
34 may impose the resort service fee at a rate less than five percent.

35 (f) A resort area district may levy a resort service fee at
36 different rates upon different classes of goods and services.

37 (g) The proceeds generated by a resort service fee shall
38 solely be used for:

39 (1) Paying all or a portion of the costs of providing a service
40 or services within the district; or

41 (2) Paying all or a portion of the costs of a project or
42 projects, including payment of debt service on resort service fee
43 bonds;

44 (3) However, a minimum of twenty-five percent of all
45 service fees shall be placed in a reserve account and shall not be
46 used except in compliance with the bylaws.

47 (h) A resort service fee shall not be imposed upon goods and
48 services sold for resale.

§7-25-13. Resort service fee administration.

1 (a) Not less than thirty days prior to the date that the resort
2 service fee becomes effective, the board shall adopt an
3 administrative resolution governing the collection and reporting
4 of the resort service fee. This administrative resolution may be
5 amended at any time as may be necessary to effectively
6 administer the resort service fee.

7 (b) The administrative resolution shall specify:

8 (1) The time that the resort service fees collected by
9 businesses are to be remitted to the district;

10 (2) The office, officer or employee of the district responsible
11 for collecting and accounting for the resort service fee receipts;

12 (3) The office, officer or employee of the district responsible
13 for enforcing collection of resort service fees and the methods
14 and procedures to be used in enforcing the collection of resort
15 service fees due; and

16 (4) The penalties for failure to report resort service fees due,
17 failure to remit resort service fees due and violation of the
18 administrative resolution.

19 (c) The administrative resolution may include:

20 (1) Further clarification and specificity in the categories of
21 goods and services that are subject to the resort service fee
22 consistent with subdivision (q), section three of this article; and

23 (2) Other administrative details necessary for the efficient
24 and effective administration of the resort service fee.

§7-25-14. Implementation and provision of services within resort area district; adoption of annual budget.

1 (a) Upon the creation of a resort area district and
2 organization of its board, a resort area district may provide for
3 the provision of services by the adoption of a resolution.

4 (b) A resolution providing for the provision of services shall
5 set forth:

6 (1) The services to be offered;

7 (2) The sources of funding for such services; and

8 (3) All other information necessary for the administration of
9 providing such services.

10 (c) A resolution providing for the provision of services may
11 be amended from time to time, as deemed necessary by the
12 board.

13 (d) Services to be offered by a resort area district shall not be
14 inconsistent with those permitted under the bylaws of the district
15 or this article and shall not include a service for which the resort
16 operator charges a fee or obtains revenue, such as operation or
17 maintenance of a ski slope or ski lift.

18 (e) The board shall adopt an annual budget for the district
19 each year. Such budget shall require approval by six sevenths of
20 the board to be adopted. Funds of the resort area district may not
21 be expended on any service or project in excess of the amounts
22 specified in the budget, and no material expenditures may occur
23 on services or projects not authorized by the budget, except upon
24 approval of at least six sevenths of the board.

25 (f) In setting the budget or any amendment to it, and in
26 approving any anticipated obligation, undertaking and related

27 expenditure of any funds received from any resort service fee or
28 from any assessment, the Board shall be empowered to condition
29 the an expenditure or undertaking, in whole or part, upon the
30 receipt of grants, loans or contribution of funds by or from other
31 sources or parties, including the resort operator, any commercial
32 interests, and any governmental entity, In the event that any
33 such conditions established by the Board are not met, the
34 expenditure and any related conditionally approved undertaking
35 shall not be required.

**§7-25-15. Authorization to implement assessments for projects;
procedures for implementing assessments; by-laws to
provide additional procedures for implementation of
assessments; notice to property owners before
implementation of assessments for projects; affidavit
of publication.**

1 (a) An assessment for a project within a resort area district
2 shall be authorized by the adoption of a resolution by the board.
3 A resolution authorizing an assessment shall only be adopted
4 after following the procedures set forth in this section.

5 (b) The bylaws of a district:

6 (1) Shall provide the procedures not addressed in this section
7 for the implementation of an assessment to pay the costs of a
8 project: *Provided*, That such procedures must be consistent with
9 constitutional standards and all other laws and regulations of this
10 state.

11 (2) May provide for the maximum amount of assessments
12 which may be levied against a parcel of real property within the
13 district.

14 (c) Fifty-one percent or more of the owners of real property
15 to be benefitted by a project may petition the board to implement
16 an assessment to pay the costs of such project. A board may on

17 its own initiative propose an assessment to pay the costs of a
18 project upon approval by six sevenths of the board.

19 (d) Upon following the procedures provided in this section
20 and a resort area district's bylaws for the implementation of an
21 assessment to pay the costs of a project, the board may, after
22 giving notice to all real property owners and holding a public
23 meeting as required by this section, adopt a resolution
24 authorizing such assessment to pay the costs of a project upon
25 approval by six sevenths of the board.

26 (e) Before the adoption of a resolution authorizing an
27 assessment to pay the costs of a project, the board shall cause
28 notice to be given to the owners of real property located within
29 the resort area district that such resolution will be considered for
30 adoption at a public meeting of the board at a date, time and
31 place named in the notice and that all persons at that meeting, or
32 any adjournment thereof, shall be given an opportunity to protest
33 or be heard concerning the adoption or rejection of the
34 resolution.

35 (f) An assessment shall not be authorized by the board if at
36 the public meeting required by this section written protest is filed
37 by at least twenty-five percent of the owners of the real property
38 within the district to be benefitted by the proposed project and
39 subject to the assessment. In the event of such protest, the
40 proposed assessment in the same form may not be reconsidered
41 by a board for a period of at least one year from the date of the
42 public meeting.

43 (g) At least thirty days prior to the date of the public
44 meeting, the notice required by this section shall, using
45 reasonable efforts, be mailed to the owners of real property to be
46 assessed for a proposed project as provided in subsection (k) of
47 this section, posted in multiple, conspicuous public locations
48 within such district and published as a Class II legal

49 advertisement in compliance with the provisions of article three,
50 chapter fifty-nine of this code. The publication area for such
51 publication shall be the resort area district.

52 (h) An affidavit of publication of the notice made by
53 newspaper publisher, or a person authorized to do so on behalf
54 of such publisher, and a copy of the notice shall be made part of
55 the minutes of the board and spread on its records of the meeting
56 described in the notice. The service of said notice upon all
57 persons owning any interest in any real property located within
58 the resort area district shall conclusively be deemed to have been
59 given upon completion of mailing as provided in subsection (k)
60 of this section and such newspaper publication.

61 (i) After the public meeting and before the board may adopt
62 a resolution authorizing implementation of assessments, the
63 board shall, using reasonable efforts, mail a true copy of the
64 proposed resolution authorizing implementation of an
65 assessment to the owners of real property in the resort area
66 district as provided in subsection (k) of this section.

67 (j) A board shall make available to the owners of real
68 property within the district a list of all owners of real property
69 within the district for the purposes of enabling such owners of
70 real property to solicit support for a petition proposing or a
71 protest against an assessment.

72 (k) For purposes of the mailing of each notice to owners of
73 real property required by this section, reasonable efforts shall be
74 made to mail such notice to all owners of real property required
75 to receive notice under this section using the real property tax
76 records and land books of the county in which such district is
77 located and any lists maintained by a resort operator or
78 homeowners association within such district. Such notice shall
79 be also mailed to each president of a homeowners association, if
80 any, located within a district which has registered with a resort

81 operator to receive such information. Immaterial defects in the
82 mailing of such notices shall not affect the validity of such
83 notices.

§7-25-16. Provisions for construction of a project.

1 (a) Prior to beginning construction on a project, the board
2 shall provide by resolution for the construction of the project and
3 shall also provide in the same or subsequent resolutions for the
4 supervision of such work by a professional engineer,
5 governmental agency or any other person designated by the
6 board. The board may provide for the construction of the project
7 by one of the two following methods or any combination thereof:

8 (1) If there exists a governmental agency with the
9 experience, knowledge and authority to construct the project, the
10 board may elect to enter in a contract with such agency for the
11 construction of all, or a part of, the project or for any other
12 service necessary or incident to the construction of the project,
13 in which case such governmental agency shall be responsible for
14 entering into contracts, subject to the board's approval, with such
15 other persons as may be necessary or incident to the construction
16 of the project; or

17 (2) The board may elect to enter into one or more contracts
18 with such contractors and other persons as may be necessary or
19 incident to the construction of the project, in which case it shall
20 solicit competitive bids. All contracts for work on any project,
21 the expense of which will exceed \$50,000, shall be awarded to
22 the lowest qualified responsible bidder who shall furnish a
23 sufficient performance and payment bond. The board may reject
24 any and all bids and if it rejects all bids, notices shall be
25 published as original required before any other bids may be
26 received. The board may let portions of the work necessary to
27 complete a project under different contracts.

28 (b) The resolution described in subsection (a) of this section
29 shall also provide for payment of the cost of the project.

30 (c) Prior to the construction of the project, the board shall
31 obtain such permits and licenses required by law for the
32 construction and operation of the project.

33 (d) No project shall be undertaken by a district that includes
34 a ski slope or ski lift.

**§7-25-17. Notice to property owners of assessments; correcting
and laying assessments; report on project
completion.**

1 (a) Prior to the issuance of assessment bonds or the levying
2 of any assessments, the board shall cause a report to be prepared
3 describing each lot or parcel of land located within the resort
4 area district to be assessed for the project and setting forth the
5 total cost of the project based on the contract with the
6 governmental agency, the accepted bid or bids, or a cost estimate
7 certified by a professional engineer, and all other costs incurred
8 prior to the commencement of construction and the future
9 administrative costs, and the respective amounts chargeable
10 upon each lot or parcel of land and the proper amount to be
11 assessed against the respective lots or parcels of land with a
12 description of the lots and parcels of land as to ownership and
13 location. If two or more different kinds of projects are involved,
14 the report shall set forth the portion of the assessment
15 attributable to each respective project. The board shall thereupon
16 give notice as specified below to the owners of real property to
17 be assessed that on or after a date specified in the notice an
18 assessment will be deemed granted against the property. The
19 notice shall state that the owner of assessed property, or other
20 interested party, may on said date appear before the board to
21 move the revision or correction of the proposed assessment and
22 shall show the total cost of the project, whether the assessments

23 will pay for all, or a part of, the total cost of the project and the
24 lots or parcels of property to be assessed and the respective
25 amounts to be assessed against such lots or parcels, with a
26 description of the respective lots and parcels of land as to
27 ownership and location. The notice shall be mailed, using
28 reasonable efforts, to the owners of real property to be assessed
29 for a proposed project as provided in subsection (c) of this
30 section, posted in multiple, conspicuous public locations within
31 such district and published as a Class II legal advertisement in
32 compliance with the provisions of article three, chapter fifty-nine
33 of this code, and the publication area for such publication is the
34 resort area district. On or after the date so advertised, the board
35 may revise, amend, correct and verify the report and proceed by
36 resolution to establish the assessments as corrected and verified
37 and shall certify the same to the governing body which created
38 the district.

39 (b) Upon completion of a project, the board shall prepare a
40 final report certifying the completion of the project and showing
41 the total cost of the project and whether the cost is greater or less
42 than the cost originally estimated. If the total cost of the project
43 is greater or less than the cost shown in the report prepared prior
44 to construction, the board may revise the assessment charged on
45 each lot or parcel of property pursuant to subsection (a) of this
46 section to reflect the total cost of the project as completed, and
47 in doing so shall, in the case of an assessment increase only,
48 follow the same procedure with regard to notice and providing
49 each owner of assessed property the right to appear before the
50 board to move for the revision or correction of such proposed
51 reassessment as required for the original assessment. If the
52 assessment is decreased, the board shall, by resolution and
53 written notice to the sheriff of the county in which the resort area
54 district is located, cause the next installment or installments or
55 assessments then due and payable by each affected property
56 owner to be reduced pro rata, and shall provide written notice to

57 such property owners of the amount of such decrease by the
58 deposit of such notice in the United States mail, postage prepaid.

59 (c) For purposes of the mailing of each notice to owners of
60 real property required by this section, reasonable efforts shall be
61 made to mail such notice to all owners of real property required
62 to receive notice under this section using the real property tax
63 records and land books of the county in which such district is
64 located and any lists maintained by a resort operator or
65 homeowners association within such district. Such notice shall
66 be also mailed to each president of a homeowners association, if
67 any, located within a district which has registered with a resort
68 operator to receive such information. Inmaterial defects in the
69 mailing of such notices shall not affect the validity of such
70 notices.

§7-25-18. Exemption of public property from assessments.

1 No lots or parcels of land owned or controlled by the United
2 States, this state, any municipality, county, county board of
3 education, resort area district or other public body shall be
4 subject to any assessments under this article.

**§7-25-19. Assessment bonds and resort service fee bonds; sinking
fund for assessment bonds and resort service fee
bonds; tax exemption.**

1 (a) For constructing and acquiring any project authorized by
2 this article the board of any such district is hereby authorized to
3 borrow money, from time to time, and in evidence thereof issue
4 the bonds of such district, payable from the proceeds of the
5 assessments or resort service fees granted under this article. Such
6 bonds shall be issued in one or more series, may bear such date
7 or dates, may mature at such time or times not exceeding thirty
8 years from their respective dates, shall be fully registered as to
9 principal and interest in the name of the bondholder with a

10 certificate of authentication, may bear interest at such rate or
11 rates not exceeding eighteen percent per annum, may be payable
12 at such times, may be executed in such manner, may be payable
13 at such place or places, may be subject to such terms of
14 redemption with or without premium, may be declared or
15 become due before maturity date thereof, may be authenticated
16 in any manner, and upon compliance of such conditions, may
17 contain such terms and covenants as provided in the resolution
18 or resolutions of the board. All such bonds shall be, and shall be
19 treated as, negotiable instruments for all purposes. Bonds
20 bearing the signatures of officers and offices on the dates of the
21 signing thereof shall be valid and binding for all purposes
22 notwithstanding that before the delivery thereof any or all such
23 persons whose signatures appear thereon shall have ceased to be
24 such officers. Notwithstanding the requirements or provisions of
25 any other law, any such bonds may be negotiated or sold in such
26 manner at such time or times and at such price or prices as is
27 found by the board to be most advantageous. Any resolution or
28 resolutions providing for the issuance of such bonds may contain
29 covenants and restrictions upon the issuance of additional bonds
30 thereafter as may be deemed necessary or advisable for the
31 assurance of the payment of the bonds thereby authorized.

32 (b) At or before the time of issuance of any bonds under this
33 article, the board shall by resolution provide for the creation of
34 a sinking fund and for payments into such fund from the
35 assessments or resort service fees granted under this article in
36 such amount as may be sufficient to pay the accruing interest and
37 retire the bonds at or before the time each will respectively
38 become due and to establish or maintain reserves therefor. All
39 sums which are or should be, in accordance with such
40 provisions, paid into such sinking fund shall be used solely for
41 the payment of interest and for the retirement of such bonds at or
42 prior to maturity as may be provided or required by such
43 resolution.

44 (c) The property, including leased property, of the resort area
45 district and bonds and any income or interest thereon issued by
46 the resort area district are exempt from taxation by the state of
47 West Virginia and other taxing bodies of the state.

§7-25-20. Indebtedness of resort area district.

1 No constitutional or statutory limitation with respect to the
2 nature or amount of or rate of interest on indebtedness which
3 may be incurred by municipalities, counties or other public or
4 governmental bodies shall apply to the indebtedness of a resort
5 area district. No indebtedness of any nature of a resort area
6 district shall constitute an indebtedness of any county creating
7 and establishing such district or a charge against any property of
8 said counties but shall be paid solely from the resort service fee
9 or assessments which the resort area district is authorized to
10 impose on the owners of the property within the district by this
11 article. No indebtedness or obligation incurred by a resort area
12 district shall give any right against any member of the governing
13 body or any member of the board of a resort area district.

**§7-25-21. Payment of assessments to sheriff; report to resort area
district; collection of delinquent assessments.**

1 (a) The assessments authorized to be imposed pursuant to
2 this article will not be considered to be ad valorem taxes or the
3 equivalent of ad valorem taxes under any provision of this code:
4 *Provided*, That for the exclusive purposes of collection of the
5 assessments authorized to be imposed under this article and
6 enforcement of the assessment liens created by section
7 twenty-two of this article, the provisions of chapter eleven-a of
8 this code shall apply as if the assessments were taxes as that term
9 is defined in section one, article one of that chapter: *Provided*,
10 That any property subject to assessments may not be sold to
11 satisfy such lien.

12 (b) The sheriff shall promptly deposit all assessments upon
13 receipt thereof in a segregated account established by the sheriff
14 for such purpose and shall maintain a record of the assessments
15 so received. Each month, the sheriff shall pay all moneys
16 collected for the resort area district into the district treasury or,
17 if the sheriff consents, to a trustee for the benefit of bondholders
18 if assessment bonds are issued by the resort area district.

19 (c) Payments to the resort area district shall be made in the
20 time set forth in section fifteen, article one, chapter eleven-a of
21 this code and the sheriff shall be entitled to take a commission
22 for collection of the assessments on behalf of the resort area
23 district, as provided in section seventeen of said article.

24 (d) For each tax year, the sheriff will prepare and deliver to
25 the board of each resort area district located in the county, a
26 statement setting forth the aggregate amount of assessments
27 received for such district and the name of any property owner
28 who failed to pay the assessments due and payable for the period
29 in question. The report shall be due on or before August 1, of the
30 following year.

31 (e) The sheriff is authorized to collect delinquent
32 assessments and enforce the liens created in section twenty-two
33 of this article as if those assessments were delinquent real
34 property taxes and the taxes are tax liens using the enforcement
35 tools provided in articles two and three, chapter eleven-a of this
36 code.

**§7-25-22. Liens; recording notice of liens; priority; release of lien;
notice to future property owners.**

1 (a) With the exception of property exempt from assessment
2 pursuant to section eighteen of this article, there shall be a lien
3 on all real property located within the resort area district for the
4 assessments imposed by section seventeen of this article, which

5 lien shall attach to those parcels made subject to the assessment
6 on the date specified in the notice to property owners. A notice
7 of the liens of said assessments referring to the assessing
8 resolution and setting forth a list of the property assessed,
9 described respectively as to amounts of assessment, ownership
10 and location of the property, shall be certified, by the chairman
11 and secretary of the board, to the clerk of the county commission
12 of the county wherein the project is located. The county clerk
13 shall record the notice of such lien in the appropriate trust deed
14 book or other appropriate county lien book and index the same
15 in the name of each owner of real property assessed. From the
16 date of an assessment, the trustee, for the benefit of bondholders
17 if assessment bonds are issued by the resort area district, and/or
18 the district shall have such lien and shall be entitled to enforce
19 the same in its, his, her or their name to the extent of the amount,
20 including principal and interest and any penalty due for any
21 failure to pay an installment when due, of such assessments and
22 against the property to which the assessment applies, as to any
23 assessment not paid as and when due. The trustee or the district,
24 as an alternative to the enforcement provision set forth in section
25 twenty-one of this article, are granted all legal remedies as are
26 necessary to collect the assessment. Such assessments shall be
27 and constitute liens for the benefit of the resort area district or
28 the trustee, for the benefit of bondholders if assessment bonds
29 are issued by the resort area district, upon the respective lots and
30 parcels of land assessed and shall have priority over all other
31 liens except to those for land taxes due the state, county and
32 municipality and except any liens for preexisting special
33 assessments provided under this code. If any assessment is
34 revised in accordance with this article, the lien created by this
35 section shall extend to the assessment so revised and shall have
36 the same priority as the priority of the lien created upon the
37 laying of the original assessment. Such assessments and interest
38 thereon shall be paid by the owners of the property assessed as
39 and when the installments are due. Following the payment in full

40 of any assessment bonds including any interest thereon, the
41 chairman and secretary of the board shall execute a release of all
42 liens and shall certify the same to county clerk for recondition.

43 (b) Following the grant of any assessment on property as
44 provided in this article, the seller of such property shall provide
45 reasonable disclosure to the buyer in the real estate contract that
46 an assessment has been granted on the property, the amount of
47 the assessment and the duration of the assessment.

§7-25-23. Resort Area Rangers.

1 (a) A board is hereby authorized to appoint bona fide
2 residents of this state to act as resort area rangers within its
3 respective resort area district upon any premises which are part
4 of said district, subject to the conditions and restrictions imposed
5 by this section.

6 (b) Before performing the duties of ranger, each appointed
7 person shall qualify for the position of ranger in the same
8 manner as is required of county officers by the taking and filing
9 of an oath of office as required by section three, article one,
10 chapter six of this code and by posting an official bond as
11 required by section one, article two, chapter six of this code. To
12 facilitate the performance of the duties of a ranger, a ranger may
13 carry a firearm or other dangerous weapon while the ranger is on
14 duty.

15 (c) It is the duty of any person appointed and qualified as a
16 ranger hereunder to preserve law and order on any premises
17 which are part of a resort area district. For this purpose, the
18 ranger shall be considered to be a law-enforcement officer in
19 accordance with the provisions of section one, article
20 twenty-nine, chapter thirty of this code and, as to offenses
21 committed within those areas, have and may exercise all the
22 powers and authority and are subject to all the requirements and

23 responsibilities of a law-enforcement officer. The assignment of
24 rangers to the duties authorized by this section may not
25 supersede in any way the authority or duty of other peace
26 officers to preserve law and order on those premises.

27 (d) The salary of all rangers shall be paid by the board. The
28 board shall furnish each ranger with an official uniform to be
29 worn while on duty and shall furnish and require each ranger
30 while on duty to wear a shield with an appropriate inscription
31 and to carry credentials certifying the person's identity and
32 authority as a ranger.

33 (e) The board at its pleasure may revoke the authority of any
34 ranger. The chairman of the board shall report the termination of
35 employment of a ranger by filing a notice to that effect in the
36 office of the clerk of the county in which the ranger's oath of
37 office was filed and in the case of a ranger licensed to carry a
38 firearm or other dangerous weapon, by notifying the clerk of the
39 circuit court of the county in which the license for the firearm or
40 other dangerous weapon was granted.

§7-25-24. Annual audit; books and records.

1 Each resort area district shall cause an audit of its books and
2 accounts to be made at least once each fiscal year by an
3 independent certified public accountants, and the cost thereof
4 may be defrayed as an administrative cost. All books and records
5 of the resort area district shall be available for inspection by any
6 property owner during reasonable business hours.

**§7-25-25. Notice of transfer of change in ownership of property
within resort area district.**

1 After the resort area district has been formed and organized,
2 as a part of any bylaws, the district's board shall promulgate
3 rules and regulations as a part of its bylaws which require timely
4 notice to the District whenever ownership of property within the

5 District has changed, along with any change in address for any
6 notices required by this article. If a new property owner within
7 the District fails to notify the district board of change in the
8 property's ownership, any notice provided by the District to the
9 previous property owner's last known address shall be deemed
10 sufficient.

§7-25-26. Liberal construction.

1 This article being necessary for the public health, safety and
2 welfare and economic development, it shall be liberally
3 construed to effectuate the purpose hereof.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

**ARTICLE 29. LAW-ENFORCEMENT TRAINING AND
CERTIFICATION.**

§30-29-1. Definitions.

1 For the purposes of this article, unless a different meaning
2 clearly appears in the context:

3 (1) "Approved law-enforcement training academy" means
4 any training facility which is approved and authorized to conduct
5 law-enforcement training as provided in this article;

6 (2) "Chief executive" means the superintendent of the State
7 Police; the chief natural resources police officer of the Division
8 of Natural Resources; the sheriff of any West Virginia county;
9 any administrative deputy appointed by the chief natural
10 resources police officer of the Division of Natural Resources; or
11 the chief of any West Virginia municipal law-enforcement
12 agency;

13 (3) "County" means the fifty-five major political
14 subdivisions of the state;

15 (4) "Exempt rank" means any noncommissioned or
16 commissioned rank of sergeant or above;

17 (5) "Governor's committee on crime, delinquency and
18 correction" or "Governor's committee" means the Governor's
19 committee on crime, delinquency and correction established as
20 a state planning agency pursuant to section one, article nine,
21 chapter fifteen of this code;

22 (6) "Law-enforcement officer" means any duly authorized
23 member of a law-enforcement agency who is authorized to
24 maintain public peace and order, prevent and detect crime, make
25 arrests and enforce the laws of the state or any county or
26 municipality thereof, other than parking ordinances, and includes
27 those persons employed as campus police officers at state
28 institutions of higher education in accordance with the
29 provisions of section five, article four, chapter eighteen-b of this
30 code, and persons employed by the Public Service Commission
31 as motor carrier inspectors and weight enforcement officers
32 charged with enforcing commercial motor vehicle safety and
33 weight restriction laws although those institutions and agencies
34 may not be considered law-enforcement agencies. The term also
35 includes those persons employed as rangers by the Hatfield-
36 McCoy Regional Recreation Authority in accordance with the
37 provisions of section six, article fourteen, chapter twenty of this
38 code, or by resort area districts in accordance with the provisions
39 of section twenty-three, article twenty-five, chapter seven of this
40 code although neither the authority nor any resort area district
41 may be considered a law-enforcement agency: *Provided*, That
42 the subject rangers shall pay the tuition and costs of training. As
43 used in this article, the term "law-enforcement officer" does not
44 apply to the chief executive of any West Virginia law-
45 enforcement agency or any watchman or special natural
46 resources police officer;

47 (7) “Law-enforcement official” means the duly appointed
48 chief administrator of a designated law-enforcement agency or
49 a duly authorized designee;

50 (8) “Municipality” means any incorporated town or city
51 whose boundaries lie within the geographic boundaries of the
52 state;

53 (9) “Subcommittee” or “law-enforcement professional
54 standards subcommittee” means the subcommittee of the
55 Governor’s committee on crime, delinquency and correction
56 created by section two of this article; and

57 (10) “West Virginia law-enforcement agency” means any
58 duly authorized state, county or municipal organization
59 employing one or more persons whose responsibility is the
60 enforcement of laws of the state or any county or municipality
61 thereof: *Provided*, That neither the Hatfield-McCoy Regional
62 Recreation Authority, the Public Service Commission nor any
63 state institution of higher education nor any resort area district
64 is a law-enforcement agency.

CHAPTER 166

**(Com. Sub. for S. B. 469 - Senators Jenkins,
Kessler, Mr. President)**

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §5-10-14 and §5-10-18 of the Code of West Virginia, 1931, as amended, all relating to service credit; providing for the purchasing of retroactive service credit by certain

employees; requiring payment of reinstatement interest in the Public Employees Retirement System in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §5-10-14 and §5-10-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-14. Service credit; retroactive provisions.

1 (a) The Board of Trustees shall credit each member with the
2 prior service and contributing service to which he or she is
3 entitled based upon rules adopted by the Board of Trustees and
4 based upon the following:

5 (1) In no event may less than ten days of service rendered by
6 a member in any calendar month be credited as a month of
7 service: *Provided*, That for employees of the State Legislature
8 whose term of employment is otherwise classified as temporary
9 and who are employed to perform services required by the
10 Legislature for its regular sessions or during the interim between
11 regular sessions and who have been or are employed during
12 regular sessions or during the interim between regular sessions
13 in seven consecutive calendar years, service credit of one month
14 shall be awarded for each ten days employed in the interim
15 between regular sessions, which interim days shall be
16 cumulatively calculated so that any ten days, regardless of
17 calendar month or year, shall be calculated toward any award of
18 one month of service credit:

19 (2) Except for hourly employees, ten or more months of
20 service credit earned in any calendar year shall be credited as a
21 year of service: *Provided*, That no more than one year of service
22 may be credited to any member for all service rendered by him

23 or her in any calendar year and no days may be carried over by
24 a member from one calendar year to another calendar year where
25 the member has received a full-year credit for that year; and

26 (3) Service may be credited to a member who was employed
27 by a political subdivision if his or her employment occurred
28 within a period of thirty years immediately preceding the date
29 the political subdivision became a participating public employer.

30 (b) The Board of Trustees shall grant service credit to
31 employees of boards of health, the Clerk of the House of
32 Delegates and the Clerk of the State Senate or to any former and
33 present member of the State Teachers Retirement System who
34 have been contributing members in the Public Employees
35 Retirement System for more than three years, for service
36 previously credited by the State Teachers Retirement System and
37 shall require the transfer of the member's accumulated
38 contributions to the system and shall also require a deposit, with
39 reinstatement interest as set forth in the Board's Rule, Refund,
40 Reinstatement, Retroactive Service, Loan And Employer Error
41 Interest Factors, 162 C. S. R. 7, of any withdrawals of
42 contributions any time prior to the member's retirement.
43 Repayment of withdrawals shall be as directed by the Board of
44 Trustees.

45 (c) Court reporters who are acting in an official capacity,
46 although paid by funds other than the county commission or
47 State Auditor, may receive prior service credit for time served in
48 that capacity.

49 (d) Active members who previously worked in CETA
50 (Comprehensive Employment and Training Act) may receive
51 service credit for time served in that capacity: *Provided*, That in
52 order to receive service credit under the provisions of this
53 subsection the following conditions must be met: (1) The
54 member must have moved from temporary employment with the

55 participating employer to permanent full-time employment with
56 the participating employer within one hundred twenty days
57 following the termination of the member's CETA employment;
58 (2) the board must receive evidence that establishes to a
59 reasonable degree of certainty as determined by the board that
60 the member previously worked in CETA; and (3) the member
61 shall pay to the board an amount equal to the employer and
62 employee contribution plus interest at the amount set by the
63 board for the amount of service credit sought pursuant to this
64 subsection: *Provided, however*, That the maximum service credit
65 that may be obtained under the provisions of this subsection is
66 two years: *Provided further*, That a member must apply and pay
67 for the service credit allowed under this subsection and provide
68 all necessary documentation by March 31, 2003: *And provided*
69 *further*, That the board shall exercise due diligence to notify
70 affected employees of the provisions of this subsection.

71 (e)(1) Employees of the State Legislature whose terms of
72 employment are otherwise classified as temporary and who are
73 employed to perform services required by the Legislature for its
74 regular sessions or during the interim time between regular
75 sessions shall receive service credit for the time served in that
76 capacity in accordance with the following. For purposes of this
77 section, the term "regular session" means day one through day
78 sixty of a sixty-day legislative session or day one through day
79 thirty of a thirty-day legislative session. Employees of the State
80 Legislature whose term of employment is otherwise classified as
81 temporary and who are employed to perform services required
82 by the Legislature for its regular sessions or during the interim
83 time between regular sessions and who have been or are
84 employed during regular sessions or during the interim time
85 between regular sessions in seven consecutive calendar years, as
86 certified by the clerk of the house in which the employee served,
87 shall receive service credit of six months for all regular sessions
88 served, as certified by the clerk of the house in which the
89 employee served, or shall receive service credit of three months

90 for each regular thirty-day session served prior to 1971:
91 *Provided*, That employees of the State Legislature whose term
92 of employment is otherwise classified as temporary and who are
93 employed to perform services required by the Legislature for its
94 regular sessions and who have been or are employed during the
95 regular sessions in thirteen consecutive calendar years as either
96 temporary employees or full-time employees or a combination
97 thereof, as certified by the clerk of the house in which the
98 employee served, shall receive a service credit of twelve months
99 for each regular session served, as certified by the clerk of the
100 house in which the employee served: *Provided, however*, That
101 the amendments made to this subsection during the 2002 regular
102 session of the Legislature only apply to employees of the
103 Legislature who are employed by the Legislature as either
104 temporary employees or full-time employees as of January 1,
105 2002, or who become employed by the Legislature as temporary
106 or full-time employees for the first time after January 1, 2002.
107 Employees of the State Legislature whose terms of employment
108 are otherwise classified as temporary and who are employed to
109 perform services required by the Legislature during the interim
110 time between regular sessions shall receive service credit of one
111 month for each ten days served during the interim between
112 regular sessions, which interim days shall be cumulatively
113 calculated so that any ten days, regardless of calendar month or
114 year, shall be calculated toward any award of one month of
115 service credit: *Provided further*, That no more than one year of
116 service may be credited to any temporary legislative employee
117 for all service rendered by that employee in any calendar year
118 and no days may be carried over by a temporary legislative
119 employee from one calendar year to another calendar year where
120 the member has received a full year credit for that year. Service
121 credit awarded for legislative employment pursuant to this
122 section shall be used for the purpose of calculating that
123 member's retirement annuity, pursuant to section twenty-two of
124 this article, and determining eligibility as it relates to credited

125 service, notwithstanding any other provision of this section.
126 Certification of employment for a complete legislative session
127 and for interim days shall be determined by the clerk of the
128 house in which the employee served, based upon employment
129 records. Service of fifty-five days of a regular session constitutes
130 an absolute presumption of service for a complete legislative
131 session and service of twenty-seven days of a thirty-day regular
132 session occurring prior to 1971 constitutes an absolute
133 presumption of service for a complete legislative session. Once
134 a legislative employee has been employed during regular
135 sessions for seven consecutive years or has become a full-time
136 employee of the Legislature, that employee shall receive the
137 service credit provided in this section for all regular and interim
138 sessions and interim days worked by that employee, as certified
139 by the clerk of the house in which the employee served,
140 regardless of when the session or interim legislative employment
141 occurred: *And provided further*, That regular session legislative
142 employment for seven consecutive years may be served in either
143 or both houses of the Legislature.

144 (2) For purposes of this section, employees of the Joint
145 Committee on Government and Finance are entitled to the same
146 benefits as employees of the House of Delegates or the Senate:
147 *Provided*, That for joint committee employees whose terms of
148 employment are otherwise classified as temporary, employment
149 in preparation for regular sessions, certified by the legislative
150 manager as required by the Legislature for its regular sessions,
151 shall be considered the same as employment during regular
152 sessions to meet service credit requirements for sessions served.

153 (f) Any employee may purchase retroactive service credit for
154 periods of employment in which contributions were not deducted
155 from the employee's pay. In the purchase of service credit for
156 employment prior to the year 1989 in any department, including
157 the Legislature, which operated from the General Revenue Fund
158 and which was not expressly excluded from budget

159 appropriations in which blanket appropriations were made for
160 the state's share of public employees' retirement coverage in the
161 years prior to the year 1989, the employee shall pay the
162 employee's share. Other employees shall pay the state's share
163 and the employee's share to purchase retroactive service credit.
164 Where an employee purchases service credit for employment
165 which occurred after the year 1988, that employee shall pay for
166 the employee's share and the employer shall pay its share for the
167 purchase of retroactive service credit: *Provided*, That no
168 legislative employee and no current or former member of the
169 Legislature may be required to pay any interest or penalty upon
170 the purchase of retroactive service credit in accordance with the
171 provisions of this section where the employee was not eligible to
172 become a member during the years for which he or she is
173 purchasing retroactive credit or had the employee attempted to
174 contribute to the system during the years for which he or she is
175 purchasing retroactive service credit and the contributions would
176 have been refused by the board: *Provided, however*, That a
177 current legislative employee purchasing retroactive credit under
178 this section does so within twenty-four months of beginning
179 contributions to the retirement system or no later than December
180 31, 2013, whichever occurs last: *Provided further*, That once a
181 legislative employee becomes a member of the retirement
182 system, he or she may purchase retroactive service credit for any
183 time he or she was employed by the Legislature and did not
184 receive service credit. Any service credit purchased shall be
185 credited as six months for each sixty-day session worked, three
186 months for each thirty-day session worked or twelve months for
187 each sixty-day session for legislative employees who have been
188 employed during regular sessions in thirteen consecutive
189 calendar years, as certified by the clerk of the house in which the
190 employee served, and credit for interim employment as provided
191 in this subsection: *And provided further*, That this legislative
192 service credit shall also be used for months of service in order to
193 meet the sixty-month requirement for the payments of a

194 temporary legislative employee member's retirement annuity:
195 *And provided further, That* no legislative employee may be
196 required to pay for any service credit beyond the actual time he
197 or she worked regardless of the service credit which is credited
198 to him or her pursuant to this section: *And provided further, That*
199 any legislative employee may request a recalculation of his or
200 her credited service to comply with the provisions of this section
201 at any time.

202 (g)(l) Notwithstanding any provision to the contrary, the
203 seven consecutive calendar years requirement and the thirteen
204 consecutive calendar years requirement and the service credit
205 requirements set forth in this section shall be applied
206 retroactively to all periods of legislative employment prior to the
207 passage of this section, including any periods of legislative
208 employment occurring before the seven consecutive and thirteen
209 consecutive calendar years referenced in this section: *Provided,*
210 *That the employee has not retired prior to the effective date of*
211 *the amendments made to this section in the 2002 regular session*
212 *of the Legislature.*

213 (2) The requirement of seven consecutive years and the
214 requirement of thirteen consecutive years apply retroactively to
215 all legislative employment prior to the effective date of the 2006
216 amendments to this section.

217 (h) The Board of Trustees shall grant service credit to any
218 former or present member of the State Police Death, Disability
219 and Retirement Fund who has been a contributing member of
220 this system for more than three years for service previously
221 credited by the State Police Death, Disability and Retirement
222 Fund if the member transfers all of his or her contributions from
223 the State Police Death, Disability and Retirement Fund to the
224 system created in this article, including repayment of any
225 amounts withdrawn any time from the State Police Death,
226 Disability and Retirement Fund by the member seeking the

227 transfer allowed in this subsection: *Provided, That* there shall be
228 added by the member to the amounts transferred or repaid under
229 this subsection an amount which shall be sufficient to equal the
230 contributions he or she would have made had the member been
231 under the Public Employees Retirement System during the
232 period of his or her membership in the State Police Death,
233 Disability and Retirement Fund, excluding contributions on
234 lump sum payment for annual leave, plus interest at a rate
235 determined by the board.

236 (i) The provisions of section twenty-two-h of this article are
237 not applicable to the amendments made to this section during the
238 2006 regular session.

§5-10-18. Termination of membership; reentry.

1 (a) When a member of the retirement system retires,
2 withdraws his or her accumulated contributions, or dies, he or
3 she ceases to be a member. When a member leaves the employ
4 of a participating public employer for any reason other than
5 retirement or death, and withdraws his or her accumulated
6 contributions from the system, he or she ceases to be a member
7 and forfeits service credited to him or her at that time. If he or
8 she becomes reemployed by a participating public employer he
9 or she shall be reinstated as a member of the retirement system
10 and his or her credited service last forfeited by him or her shall
11 be restored to his or her credit: *Provided, That* he or she must be
12 reemployed for a period of one year or longer to have the service
13 restored: *Provided, however, That* he or she returns to the
14 members' deposit fund the amount, if any, he or she withdrew
15 from the fund, together with reinstatement interest as set forth in
16 the Board's Rule, Refund, Reinstatement, Retroactive Service,
17 Loan And Employer Error Interest Factors, 162 C. S. R. 7, on the
18 withdrawn amount from the date of withdrawal to the date of
19 repayment, and that the repayment begins within two years of

20 the return to employment and that the full amount is repaid
21 within five years of the return to employment. Any failure to
22 repay the full amount in accordance with this section shall be
23 treated as an overpayment or excess contribution subject to
24 section forty-four of this article.

25 (b) The Pretera Center for Mental Health Services, Valley
26 Comprehensive Mental Health Center, Westbrook Health
27 Services and Eastern Panhandle Mental Health Center, and their
28 successors in interest, shall provide for their employees a
29 pension plan in lieu of the Public Employees Retirement System
30 during the existence of the named mental health centers and their
31 successors in interest.

32 (c) The administrative bodies of the Pretera Center for
33 Mental Health Services, Valley Comprehensive Mental Health
34 Center, Westbrook Health Services and Eastern Panhandle
35 Mental Health Center shall, on or before May 1, 1997, give
36 written notice to each employee who is a member of the Public
37 Employees Retirement System of the option to withdraw from
38 or remain in the system. The notice shall include a copy of this
39 section and a statement explaining the member's options
40 regarding membership. The notice shall include a statement in
41 plain language giving a full explanation and actuarial projection
42 figures in support of the explanation regarding the individual
43 member's current account balance, vested and nonvested, and his
44 or her projected return upon remaining in the Public Employees
45 Retirement System until retirement, disability or death, in
46 comparison with the projected return upon withdrawing from the
47 Public Employees Retirement System and joining a private
48 pension plan provided by the Community Mental Health Center
49 and remaining in the private pension plan until retirement,
50 disability or death. The administrative bodies shall keep in their
51 respective records a permanent record of each employee's
52 signature confirming receipt of the notice.

53 (d) Effective March 1, 2003, and ending December 31, 2004,
54 any member may purchase credited service previously forfeited
55 by him or her and the credited service shall be restored to his or
56 her credit: *Provided, That he or she returns to the members'*
57 *deposit fund the amount, if any, he or she withdrew from the*
58 *fund, together with interest on the withdrawn amount from the*
59 *date of withdrawal to the date of repayment at a rate to be*
60 *determined by the board. The repayment under this section may*
61 *be made by lump sum or repaid over a period of time not to*
62 *exceed sixty months. Where the member elects to repay the*
63 *required amount other than by lump sum, the member is required*
64 *to pay interest at the rate determined by the board until all sums*
65 *are fully repaid.*

66 (e) Effective July 1, 2005, and ending December 31, 2006,
67 any emergency services personnel may purchase service credit
68 for the time period beginning January 1, 1990, and ending
69 December 31, 1995: *Provided, That the person was employed as*
70 *an emergency service person in this state for that time period:*
71 *Provided, however, That any person obtaining service credit*
72 *under this subsection is required to pay the employee's share and*
73 *the employer's share upon his or her actual salary for the years*
74 *in question plus interest at the assumed actuarial rate of return*
75 *for the plan year being repurchased.*

76 (f) Jobs for West Virginia's graduates and their successors
77 in interest shall provide a pension plan in lieu of the Public
78 Employees Retirement System for employees hired on or after
79 July 1, 2005.

80 (g) Wetzel County Hospital and their successors in interest
81 shall provide a pension plan in lieu of the Public Employees
82 Retirement System for employees hired on or after July 1, 2005.

CHAPTER 167

**(H. B. 2469 - By Delegates Perry, Staggers, Swartzmiller,
Walker, Barill and Williams)**

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §5-10-48 of the Code of West Virginia, 1931, as amended, relating to increasing the cap on earnings during temporary reemployment after retirement.

Be it enacted by the Legislature of West Virginia:

That §5-10-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

1 (a) The Legislature finds that a compelling state interest
2 exists in maintaining an actuarially sound retirement system and
3 that this interest necessitates that certain limitations be placed
4 upon an individual's ability to retire from the system and to then
5 later return to state employment as an employee with a
6 participating public employer while contemporaneously drawing
7 an annuity from the system. The Legislature hereby further finds
8 and declares that the interests of the public are served when
9 persons having retired from public employment are permitted,
10 within certain limitations, to render post-retirement employment
11 in positions of public service, either in elected or appointed

12 capacities. The Legislature further finds and declares that it has
13 the need for qualified employees and that in many cases an
14 employee of the Legislature will retire and be available to return
15 to work for the Legislature as a per diem employee. The
16 Legislature further finds and declares that in many instances
17 these employees have particularly valuable expertise which the
18 Legislature cannot find elsewhere. The Legislature further finds
19 and declares that reemploying these persons on a limited per
20 diem basis after they have retired is not only in the best interests
21 of this state, but has no adverse effect whatsoever upon the
22 actuarial soundness of this particular retirement system.

23 (b) For the purposes of this section: (1) "Regularly employed
24 on a full-time basis" means employment of an individual by a
25 participating public employer, in a position other than as an
26 elected or appointed public official, which normally requires
27 twelve months per year service and at least one thousand forty
28 hours of service per year in that position; (2) "temporary
29 full-time employment or temporary part-time employment"
30 means employment of an individual on a temporary or
31 provisional basis by a participating public employer, other than
32 as an elected or appointed public official, in a position which
33 does not otherwise render the individual as regularly employed;
34 (3) "former employee of the Legislature" means any person who
35 has retired from employment with the Legislature and who has
36 at least ten years' contributing service with the Legislature; and
37 (4) "reemployed by the Legislature" means a former employee
38 of the Legislature who has been reemployed on a per diem basis
39 not to exceed one hundred seventy-five days per calendar year.

40 (c) In the event a retirant becomes regularly employed on a
41 full-time basis by a participating public employer, payment of
42 his or her annuity shall be suspended during the period of his or
43 her reemployment and he or she shall become a contributing
44 member to the retirement system. If his or her reemployment is

45 for a period of one year or longer, his or her annuity shall be
46 recalculated and he or she shall be granted an increased annuity
47 due to the additional employment, the annuity to be computed
48 according to section twenty-two of this article. A retirunt may
49 accept legislative per diem, temporary full-time or temporary
50 part-time employment from a participating employer without
51 suspending his or her retirement annuity so long as he or she
52 does not receive annual compensation in excess of \$20,000.

53 (d) In the event a member retires and is then subsequently
54 elected to a public office or is subsequently appointed to hold an
55 elected public office, or is a former employee of the Legislature
56 who has been reemployed by the Legislature, he or she has the
57 option, notwithstanding subsection (c) of this section, to either:

58 (1) Continue to receive payment of his or her annuity while
59 holding public office or during any reemployment of a former
60 employee of the Legislature on a per diem basis, in addition to
61 the salary he or she may be entitled to as an office holder or as
62 a per diem reemployed former employee of the Legislature; or

63 (2) Suspend the payment of his or her annuity and become
64 a contributing member of the retirement system as provided in
65 subsection (c) of this section. Notwithstanding the provisions of
66 this subsection, a member who is participating in the system as
67 an elected public official may not retire from his or her elected
68 position and commence to receive an annuity from the system
69 and then be elected or reappointed to the same position unless
70 and until a continuous twelve-month period has passed since his
71 or her retirement from the position: *Provided*, That a former
72 employee of the Legislature may not be reemployed by the
73 Legislature on a per diem basis until at least sixty days after the
74 employee has retired: *Provided, however*, That the limitation on
75 compensation provided by subsection (c) of this section does not
76 apply to the reemployed former employee: *Provided further*,

77 That in no event may reemployment by the Legislature of a per
78 diem employee exceed one hundred seventy-five days per
79 calendar year.

80 (e) A member who is participating in the system
81 simultaneously as both a regular, full-time employee of a
82 participating public employer and as an elected or appointed
83 member of the legislative body of the state or any political
84 subdivision may, upon meeting the age and service requirements
85 of this article, elect to retire from his or her regular full-time
86 state employment and may commence to receive an annuity from
87 the system without terminating his or her position as a member
88 of the legislative body of the state or political subdivision:
89 *Provided, That* the retired member shall not, during the term of
90 his or her retirement and continued service as a member of the
91 legislative body of a political subdivision, be eligible to continue
92 his or her participation as a contributing member of the system
93 and shall not continue to accrue any additional service credit or
94 benefits in the system related to the continued service.

95 (f) Notwithstanding the provisions of section twenty-seven-b
96 of this article, any publicly elected member of the legislative
97 body of any political subdivision or of the State Legislature, the
98 Clerk of the House of Delegates and the Clerk of the Senate may
99 elect to commence receiving in-service retirement distributions
100 from this system upon attaining the age of seventy and one-half
101 years: *Provided, That* the member is eligible to retire under the
102 provisions of section twenty or twenty-one of this article:
103 *Provided, however, That* the member elects to stop actively
104 contributing to the system while receiving the in-service
105 distributions.

106 (g) The provisions of section twenty-two-h of this article are
107 not applicable to the amendments made to this section during the
108 2006 Regular Session.

CHAPTER 168

(Com. Sub. for S. B. 431 - By Senators Jenkins and McCabe)

[Passed April 8, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 18, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10D-11, relating to the liability of a participating public employer and its successor to pay delinquent retirement contributions, delinquency fees and related costs; and providing for enforcement and collection of the costs by the Consolidated Public Retirement Board.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-10D-11, to read as follows:

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-11. Liability of participating public employer for delinquent retirement contributions; liability of participating public employer's successor for delinquent retirement contributions; lien for delinquent contributions; collection by suit.

- 1 (a) A participating public employer of a public retirement
- 2 system administered pursuant to this article that fails, for a
- 3 period of sixty days, to pay: (i) An employee retirement
- 4 contribution; (ii) an employer retirement contribution; (iii) a
- 5 delinquency fee; (iv) any other fees, charges or costs related to
- 6 the public retirement system; or (v) any combination of
- 7 subdivisions (i) through (iv) of this subsection, is liable for the
- 8 amount pursuant to this article.

9 (b) If a participating public employer of a public retirement
10 system administered pursuant to this article: (i) Sells all or
11 substantially all of its stock or assets; (ii) merges with another
12 entity; (iii) dissolves its business; or (iv) participates, voluntarily
13 or involuntarily, in an event which causes its business to
14 terminate, all unpaid employee retirement contributions,
15 employer retirement contributions, delinquency fees and other
16 fees, charges, or costs related to the public retirement system
17 shall be paid within thirty days of the date of applicable event
18 identified in subdivision (i) through (iv) of this subsection.

19 (c) A transferee, successor or assignee of a participating
20 public employer of a public retirement system administered
21 pursuant to this article is liable for the payment of all employee
22 retirement contributions, employer retirement contributions,
23 delinquency fees and other fees, charges or costs related to the
24 public retirement system, if the participating public employer
25 does not pay those amounts as provided in subsection (b) of this
26 section.

27 (d) All amounts due to the Consolidated Public Retirement
28 Board from a participating public employer under this article is
29 a debt owed to the Consolidated Public Retirement Board
30 enforceable by a lien on all assets of a participating public
31 employer, or its transferee, successor or assignee within this
32 state. The lien attaches to all assets of a participating public
33 employer within this state, or all assets of its transferee,
34 successor or assignee on the date that any amount owed to the
35 Consolidated Public Retirement Board is due. If a participating
36 public employer, or its transferee, successor or assignee fails to
37 pay an amount owed to the Consolidated Public Retirement
38 Board under this article for a period of more than sixty days, the
39 Consolidated Public Retirement Board may enforce the lien
40 against the participating public employer, or its transferee,
41 successor or assignee by instituting an action in the Circuit Court
42 of Kanawha County. In the event that the Consolidated Public
43 Retirement Board institutes an action against a participating
44 public employer, or its transferee, successor or assignee to

45 enforce a lien, the Consolidated Public Retirement Board is
46 entitled to recover the amounts identified in subsection (a) of this
47 section and in addition to those amounts, is entitled to recover all
48 fees and costs incurred by the Consolidated Public Retirement
49 Board during the pendency of the action, including, without
50 limitation, accrued interest, expert witness costs, filing fees,
51 deposition costs and reasonable attorney fees.

52 (e) If a section, subsection, subdivision, provision, clause or
53 phrase of this article or its application to any person or
54 circumstance is held unconstitutional or invalid, the
55 unconstitutionality or invalidity does not affect other sections,
56 subsections, subdivisions, provisions, clauses or phrases or
57 applications of the article, and to this end each and every section,
58 subsection, subdivision, provision, clause and phrase of this
59 article are declared to be severable. The Legislature declares that
60 it would have enacted the remaining sections, subsections,
61 subdivisions, provisions, clauses and phrases of this article even
62 if it had known that any sections, subsections, subdivisions,
63 provisions, clauses and phrases of this article would be declared
64 to be unconstitutional or invalid, and that it would have enacted
65 this article even if it had known that its application to any person
66 or circumstance would be held to be unconstitutional or invalid.

CHAPTER 169

(S. B. 190 - By Senators Kessler (Mr. President) and M. Hall)
[By Request of the Executive]

[Passed April 13, 2013; in effect July 1, 2013.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §17-27-5 and §17-27-9 of the Code of
West Virginia, 1931, as amended, all relating to the funding of

transportation public-private partnership projects and their corresponding comprehensive agreements; eliminating requirement that money from the State Road Fund only be used for public-private partnership projects where the money serves as a required match for federal funds specifically earmarked in a federal authorization or appropriation bill and does not exceed four percent of the immediate preceding three fiscal years' average of the Division of Highways' construction contracts awarded under the competitive bid process; allowing public-private partnership projects to use money from the State Road Fund when the projects are in excess of \$20 million, constructed by the Division of Highways and contained in its six-year plan; providing that any earnings in excess of maximum rate of return that is negotiated in comprehensive agreements be deposited in the State Road Fund; providing a sunset provision prohibiting comprehensive agreements for public-private partnership projects after June 30, 2017; eliminating the requirement that a comprehensive agreement for public-private partnership projects be approved by concurrent resolution of the Legislature and be submitted to the Governor for his or her approval or disapproval before the Division of Highways enters into the comprehensive agreement; and mandating that the Division of Highways provide a copy of any comprehensive agreement to the Legislature's Joint Committee on Government and Finance at least thirty days prior to said agreement being executed by the Division of Highways for a public-private partnership project.

Be it enacted by the Legislature of West Virginia:

That §17-27-5 and §17-27-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 27. PUBLIC-PRIVATE TRANSPORTATION FACILITIES ACT.

§17-27-5. Submission and review of conceptual proposals; approval by the Commissioner of Highways.

1 (a) A private entity may submit in writing a solicited
2 conceptual proposal for a transportation facility to the division
3 for consideration. The conceptual proposal shall include the
4 following:

5 (1) A statement of the private entity's qualifications and
6 experience;

7 (2) A description of the proposed transportation facility;

8 (3) A description of the financing for the transportation
9 facility; and

10 (4) A statement setting forth the degree of public support for
11 the proposed transportation facility, including a statement of the
12 benefits of the proposed transportation facility to the public and
13 its compatibility with existing transportation facilities.

14 (b) Following review by the division, the division shall
15 submit to the Commissioner of Highways the conceptual
16 proposals and priority ranking for review for final selection.

17 (c) The conceptual proposal shall be accompanied by the
18 following material and information unless waived by the
19 division with respect to the transportation facility or facilities
20 that the private entity proposes to develop as a qualifying
21 transportation facility:

22 (1) A topographic map (1:2,000 or other appropriate scale)
23 indicating the location of the transportation facility or facilities;

24 (2) A description of the transportation facility or facilities,
25 including the conceptual design of the facility or facilities and all
26 proposed interconnections with other transportation facilities;

27 (3) The projected total life-cycle cost of the transportation
28 facility or facilities and the proposed date for acquisition of or

29 the beginning of construction of, or improvements to, the
30 transportation facility or facilities;

31 (4) A statement setting forth the method by which the
32 developer proposes to secure all property interests required for
33 the transportation facility or facilities: *Provided*, That with the
34 approval of the division, the private entity may request that the
35 comprehensive agreement assign the division with responsibility
36 for securing all property interests, including public utility
37 facilities, with all costs, including costs of acquiring the
38 property, to be reimbursed to the division by the private entity.
39 The statement shall include the following information regarding
40 the property interests or rights, including, but not limited to,
41 rights to extract mineable minerals:

42 (A) The names and addresses, if known, of the current
43 owners of the property needed for the transportation facility or
44 facilities;

45 (B) The nature of the property interests to be acquired;

46 (C) Any property that the division may expect to condemn;
47 and

48 (D) The extent to which the property has been or will be
49 subjected to the extraction of mineable minerals.

50 (5) Information relating to the current transportation plans,
51 if any, of each affected local jurisdiction;

52 (6) A list of all permits and approvals required for
53 acquisition or construction of or improvements to the
54 transportation facility or facilities from local, state or federal
55 agencies and a projected schedule for obtaining the permits and
56 approvals: *Provided*, That the acquisition, construction,
57 improvement or operation of a qualifying transportation facility
58 that includes the extraction of mineable minerals is required to

59 obtain all necessary permits or approvals from all applicable
60 authorities in the same manner as if it were not a qualifying
61 transportation facility under this article;

62 (7) A list of public utility facilities, if any, that will be
63 crossed or affected by or as the result of the construction or
64 improvement of the public port transportation facility or
65 facilities and a statement of the plans of the developer to
66 accommodate the crossings or relocations;

67 (8) A statement setting forth the developer's general plans
68 for financing and operating the transportation facility or
69 facilities;

70 (9) The names and addresses of the persons who may be
71 contacted for further information concerning the request;

72 (10) Information about the developer, including, but not
73 limited to, an organizational chart of the developer,
74 capitalization of the developer, experience in the operation of
75 transportation facilities and references and certificates of good
76 standing from the Tax Commissioner, Insurance Commissioner
77 and the Division of Unemployment Compensation evidencing
78 that the developer is in good standing with state tax, workers'
79 compensation and unemployment compensation laws,
80 respectively; and

81 (11) Any additional material and information requested by
82 the Commissioner of Highways.

83 (d) The division, with approval of the Commissioner of
84 Highways, may solicit proposals from private entities for the
85 acquisition, construction or improvement of transportation
86 facilities in a form and with the content determined by the
87 division.

88 (e) The division may solicit any proposal for the acquisition,
89 construction or improvement of the transportation facility or
90 facilities as a qualifying transportation facility if it is determined
91 that it serves the public purpose of this article. The division may
92 determine that the acquisition, construction or improvement of
93 the transportation facility or facilities as a qualifying
94 transportation facility serves a public purpose if:

95 (1) There is a public need for the transportation facility of
96 the type the private entity proposes to operate as a qualifying
97 transportation facility;

98 (2) The transportation facility and the proposed
99 interconnections with existing transportation facilities and the
100 developer's plans for development of the qualifying
101 transportation facility are reasonable and compatible with the
102 state transportation plan and with the local comprehensive plan
103 or plans;

104 (3) The estimated cost of the transportation facility or
105 facilities is reasonable in relation to similar facilities;

106 (4) The acquisition, construction, improvement or the
107 financing of the transportation facility or facilities does not
108 involve any moneys from the State Road Fund: *Provided*, That
109 moneys from the State Road Fund may be used if the project is
110 constructed by the division, is in excess of \$20 million and is
111 contained in the division's six-year plan: *Provided, however*,
112 That the moneys from the General Revenue Fund may also be
113 used if so designated and approved by the Legislature.

114 (5) The use of federal funds in connection with the financing
115 of a qualifying transportation facility has been determined by the
116 division to be compatible with the state transportation plan and
117 with the local comprehensive plan or plans; and

118 (6) The private entity's plans will result in the timely
119 acquisition or construction of or improvements to the
120 transportation facility for their more efficient operation and that
121 the private entity's plans will result in a more timely and
122 economical delivery of the transportation facility than otherwise
123 available under existing delivery systems.

124 (f) Notwithstanding any provision of this article to the
125 contrary, the recommendation of the division to the
126 Commissioner of Highways is subject to:

127 (1) The private entity's entering into a comprehensive
128 agreement with the division; and

129 (2) With respect to transportation facilities, the requirement
130 that public information dissemination with regard to any
131 proposal under consideration comply with the division's policy
132 on the public involvement process, as revised.

133 (g) In connection with its approval of the development of the
134 transportation facility as a qualifying transportation facility, the
135 division shall establish a date for the acquisition of or the
136 beginning of construction of or improvements to the qualifying
137 transportation facility. The division may extend that date.

138 (h) Selection by the Commissioner of Highways:

139 (1) Upon presentations of proposals received by the division,
140 the commissioner shall make his or her decision for the project.

141 (2) The commissioner shall notify the division and the public
142 of the final selection for the project.

§17-27-9. Comprehensive agreement.

1 (a) Prior to acquiring, constructing or improving the
2 qualifying transportation facility, the developer shall enter into

3 a comprehensive agreement with the division. The
4 comprehensive agreement shall provide for:

5 (1) Delivery of performance or payment bonds in connection
6 with the construction of or improvements to the qualifying
7 transportation facility, in the forms and amounts satisfactory to
8 the division;

9 (2) Review and approval of the final plans and specifications
10 for the qualifying transportation facility by the division;

11 (3) Inspection of the construction of or improvements to the
12 qualifying transportation facility to ensure that they conform to
13 the engineering standards acceptable to the division;

14 (4) Maintenance of a policy or policies of public liability
15 insurance or self insurance, in a form and amount satisfactory to
16 the division and reasonably sufficient to insure coverage of tort
17 liability to the public and employees and to enable the continued
18 operation of the qualifying transportation facility: *Provided*, That
19 in no event may the insurance impose any pecuniary liability on
20 the state, its agencies or any political subdivision of the state.
21 Copies of the policies shall be filed with the division
22 accompanied by proofs of coverage;

23 (5) Monitoring of the maintenance and operating practices
24 of the developer by the division and the taking of any actions the
25 division finds appropriate to ensure that the qualifying
26 transportation facility is properly maintained and operated;

27 (6) Itemization and reimbursement to be paid to the division
28 for the review and any services provided by the division;

29 (7) Filing of appropriate financial statements on a periodic
30 basis;

31 (8) A reasonable maximum rate of return on investment for
32 the developer;

33 (9) The date of termination of the developer's duties under
34 this article and dedication to the division; and

35 (10) That a transportation facility shall accommodate all
36 public utilities on a reasonable, nondiscriminatory and
37 completely neutral basis and in compliance with the provisions
38 of section seventeen-b, article four, chapter seventeen of this
39 code.

40 (b) The comprehensive agreement may require user fees
41 established by agreement of the parties. Any user fees shall be
42 set at a level that, taking into account any service payments,
43 allows the developer the rate of return on its investment
44 specified in the comprehensive agreement: *Provided*, That the
45 schedule and amount of the initial user fees to be imposed and
46 any increase of the user fees must be approved by the
47 Commissioner of the Division of Highways. A copy of any
48 service contract shall be filed with the division. A schedule of
49 the current user fees shall be made available by the developer to
50 any member of the public upon request. In negotiating user fees
51 under this section, the parties shall establish fees that are the
52 same for persons using the facility under like conditions and that
53 will not unreasonably discourage use of the qualifying
54 transportation facility. The execution of the comprehensive
55 agreement or any amendment to the comprehensive agreement
56 constitutes conclusive evidence that the user fees provided in the
57 comprehensive agreement comply with this article. User fees
58 established in the comprehensive agreement as a source of
59 revenues may be in addition to, or in lieu of, service payments.

60 (c) In the comprehensive agreement, the division may agree
61 to accept grants or loans from the developer, from time to time,
62 from amounts received from the state or federal government or
63 any agency or instrumentality of the state or federal government.

64 (d) The comprehensive agreement shall incorporate the
65 duties of the developer under this article and may contain any

66 other terms and conditions that the division determines serve the
67 public purpose of this chapter. Without limitation, the
68 comprehensive agreement may contain provisions under which
69 the division agrees to provide notice of default and cure rights
70 for the benefit of the developer and the persons specified in the
71 comprehensive agreement as providing financing for the
72 qualifying transportation facility. The comprehensive agreement
73 may contain any other lawful terms and conditions to which the
74 developer and the division mutually agree, including, without
75 limitation, provisions regarding unavoidable delays or provisions
76 providing for a loan of public funds to the developer to acquire,
77 construct or improve one or more qualifying transportation
78 facilities.

79 (e) The comprehensive agreement shall require the deposit
80 of any earnings in excess of the maximum rate of return as
81 negotiated in the comprehensive agreement in the State Road
82 Fund established pursuant to section one, article three, chapter
83 seventeen of this code.

84 (f) Any changes in the terms of the comprehensive
85 agreement, agreed upon by the parties, shall be added to the
86 comprehensive agreement by written amendment.

87 (g) Notwithstanding any provision of this article to the
88 contrary, the division may not enter into any comprehensive
89 agreements with a developer after June 30, 2017.

90 (h) Notwithstanding any provision of this article to the
91 contrary, at least thirty days prior to execution, the commissioner
92 shall provide a copy of a comprehensive agreement to the Joint
93 Committee on Government and Finance.

CHAPTER 170

(Com. Sub. for H. B. 2825 - By Delegates Perdue,
Perry, Ferns, Morgan, M. Poling,
Staggers, White and Williams)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 1, 2013.]

AN ACT to amend and reenact §6-7-2a of the Code of West Virginia, 1931, as amended, relating to certain appointive state officers salaries.

Be it enacted by the Legislature of West Virginia:

That §6-7-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

- 1 (a) Each of the following appointive state officers named in
- 2 this subsection shall be appointed by the Governor, by and with
- 3 the advice and consent of the Senate. Each of the appointive state
- 4 officers serves at the will and pleasure of the Governor for the
- 5 term for which the Governor was elected and until the respective
- 6 state officers' successors have been appointed and qualified.
- 7 Each of the appointive state officers are subject to the existing
- 8 qualifications for holding each respective office and each has
- 9 and is hereby granted all of the powers and authority and shall
- 10 perform all of the functions and services heretofore vested in and
- 11 performed by virtue of existing law respecting each office.

12 The annual salary of each named appointive state officer is
13 as follows:

14 Commissioner, Division of Highways, \$92,500;
15 Commissioner, Division of Corrections, \$80,000; Director,
16 Division of Natural Resources, \$75,000; Superintendent, State
17 Police, \$85,000; Commissioner, Division of Banking, \$75,000;
18 Commissioner, Division of Culture and History, \$65,000;
19 Commissioner, Alcohol Beverage Control Commission,
20 \$75,000; Commissioner, Division of Motor Vehicles, \$75,000;
21 Chairman, Health Care Authority, \$80,000; members, Health
22 Care Authority, \$70,000; Director, Human Rights Commission,
23 \$55,000; Commissioner, Division of Labor, \$70,000; prior to
24 July 1, 2011, Director, Division of Veterans Affairs, \$65,000;
25 Chairperson, Board of Parole, \$55,000; members, Board of
26 Parole, \$50,000; members, Employment Security Review Board,
27 \$17,000; and Commissioner, Workforce West Virginia, \$75,000.
28 Secretaries of the departments shall be paid an annual salary as
29 follows: Health and Human Resources, \$95,000: *Provided*, That
30 effective July 1, 2013, the Secretary of the Department of Health
31 and Human Resources shall be paid an annual salary not to
32 exceed \$175,000; Transportation, \$95,000: *Provided*, That if the
33 same person is serving as both the Secretary of Transportation
34 and the Commissioner of Highways, he or she shall be paid
35 \$120,000; Revenue, \$95,000; Military Affairs and Public Safety,
36 \$95,000; Administration, \$95,000; Education and the Arts,
37 \$95,000; Commerce, \$95,000; Veterans' Assistance, \$95,000;
38 and Environmental Protection, \$95,000: *Provided, however*, That
39 any officer specified in this subsection whose salary is increased
40 by more than \$5,000 as a result of the amendment and
41 reenactment of this section during the 2011 regular session of the
42 Legislature shall be paid the salary increase in increments of
43 \$5,000 per fiscal year beginning July 1, 2011 up to the maximum
44 salary provided in this subsection.

45 (b) Each of the state officers named in this subsection shall
46 continue to be appointed in the manner prescribed in this code,
47 and shall be paid an annual salary as follows:

48 Director, Board of Risk and Insurance Management,
49 \$80,000; Director, Division of Rehabilitation Services, \$70,000;
50 Director, Division of Personnel, \$70,000; Executive Director,
51 Educational Broadcasting Authority, \$75,000; Secretary, Library
52 Commission, \$72,000; Director, Geological and Economic
53 Survey, \$75,000; Executive Director, prosecuting attorneys
54 Institute, \$70,000; Executive Director, Public Defender Services,
55 \$70,000; Commissioner, Bureau of Senior Services, \$75,000;
56 Director, State Rail Authority, \$65,000; Executive Director,
57 Women's Commission, \$45,000; Director, Hospital Finance
58 Authority, \$35,000; member, Racing Commission, \$12,000;
59 Chairman, Public Service Commission, \$85,000; members,
60 Public Service Commission, \$85,000; Director, Division of
61 Forestry, \$75,000; Director, Division of Juvenile Services,
62 \$80,000; and Executive Director, Regional Jail and Correctional
63 Facility Authority, \$80,000.

64 (c) Each of the following appointive state officers named in
65 this subsection shall be appointed by the Governor, by and with
66 the advice and consent of the Senate. Each of the appointive state
67 officers serves at the will and pleasure of the Governor for the
68 term for which the Governor was elected and until the respective
69 state officers' successors have been appointed and qualified.
70 Each of the appointive state officers are subject to the existing
71 qualifications for holding each respective office and each has
72 and is hereby granted all of the powers and authority and shall
73 perform all of the functions and services heretofore vested in and
74 performed by virtue of existing law respecting each office.

75 The annual salary of each named appointive state officer
76 shall be as follows:

77 Commissioner, State Tax Division, \$92,500; Insurance
78 Commissioner, \$92,500; Director, Lottery Commission,
79 \$92,500; Director, Division of Homeland Security and
80 Emergency Management, \$65,000; and Adjutant General,
81 \$125,000.

82 (d) No increase in the salary of any appointive state officer
83 pursuant to this section may be paid until and unless the
84 appointive state officer has first filed with the State Auditor and
85 the Legislative Auditor a sworn statement, on a form to be
86 prescribed by the Attorney General, certifying that his or her
87 spending unit is in compliance with any general law providing
88 for a salary increase for his or her employees. The Attorney
89 General shall prepare and distribute the form to the affected
90 spending units.

CHAPTER 171

**(S. B. 394 - By Senators Kessler (Mr. President),
Barnes, Beach, Blair, Boley, Cann, Carmichael, Chafin, Cole,
Cookman, Edgell, Facemire, Fitzsimmons, Green, D. Hall, M.
Hall, Jenkins, Kirkendoll, Laird, McCabe, Miller, Nohe,
Palumbo, Plymale, Prezioso, Snyder, Stollings, Sypolt, Tucker,
Unger, Walters, Wells, Williams and Yost)**

[Passed April 13, 2013; in effect July 1, 2013.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §5-10-27 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-20 of said code; to amend and reenact §8-22A-22 of said code; to amend and reenact §15-2-33 of said code; and to amend and reenact §15-2A-12 of said code, all relating to providing scholarships for dependent children of law-enforcement officers who die in

performance of duty; modifying scholarship benefits for certain dependents; and establishing scholarship benefits for certain dependents.

Be it enacted by the Legislature of West Virginia:

That §5-10-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §7-14D-20 of said code be amended and reenacted; that §8-22A-22 of said code be amended and reenacted; that §15-2-33 of said code be amended and reenacted; and that §15-2A-12 of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES
RETIREMENT ACT.**

§5-10-27. Preretirement death annuities.

1 (a) (1) Except as otherwise provided in this section, in the
2 event any member who has ten or more years of credited service
3 or any former member with ten or more years of credited service
4 and who is entitled to a deferred annuity, pursuant to section
5 twenty-one of this article, may at any time prior to the effective
6 date of his or her retirement, by written declaration duly
7 executed and filed with the board of trustees, in the same manner
8 as if he or she were then retiring from the employ of a
9 participating public employer, elect option A provided in section
10 twenty-four of this article and nominate a beneficiary whom the
11 board finds to have had an insurable interest in the life of the
12 member. Prior to the effective date of his or her retirement, a
13 member may revoke his or her election of option A and
14 nomination of beneficiary and he or she may again prior to his

15 or her retirement elect option A and nominate a beneficiary as
16 provided in this subsection. Upon the death of a member who
17 has an option A election in force, his or her beneficiary, if living,
18 shall immediately receive an annuity computed in the same
19 manner in all respects as if the same member had retired the day
20 preceding the date of his or her death, notwithstanding that he or
21 she might not have attained age sixty years, and elected the said
22 option A. If at the time of his or her retirement a member has an
23 option A election in force, his or her election of option A and
24 nomination of beneficiary shall thereafter continue in force. As
25 an alternative to annuity option A, a member or former member
26 may elect to have the preretirement death benefit paid as a return
27 of accumulated contributions in a lump sum amount to any
28 beneficiary or beneficiaries he or she chooses.

29 (2) In the event any member or former member, who first
30 became a member of the Public Employees Retirement System
31 after the effective date of amendments made to this section
32 during the 2006 regular legislative session and who has ten or
33 more years of credited service and who is entitled to a deferred
34 annuity, pursuant to section twenty-one of this article: Dies
35 without leaving a surviving spouse; but leaves surviving him or
36 her a child who is financially dependent on the member by virtue
37 of a permanent mental or physical disability upon evidence
38 satisfactory to the board; and has named the disabled child as
39 sole beneficiary, the disabled child shall immediately receive an
40 annuity computed in the same manner in all respects as if the
41 member had: (A) Retired the day preceding the date of his or her
42 death, notwithstanding that he or she might not have attained age
43 sixty or sixty-two years, as the case may be; (B) elected option
44 A provided in section twenty-four of this article; and (C)
45 nominated his or her disabled child as beneficiary. A member or
46 former member with ten or more years of credited service, who
47 does not leave surviving him or her a spouse or a disabled child,
48 may elect to have the preretirement death benefit paid as a return

49 of accumulated contributions in a lump sum amount to any
50 beneficiary or beneficiaries he or she chooses.

51 (b)(1) In the event any member who has ten or more years of
52 credited service, or any former member with ten or more years
53 of credited service and who is entitled to a deferred annuity,
54 pursuant to section twenty-one of this article: Dies; and leaves a
55 surviving spouse, the surviving spouse shall immediately receive
56 an annuity computed in the same manner in all respects as if the
57 member had: (A) Retired the day preceding the date of his or her
58 death, notwithstanding that he or she might not have attained age
59 sixty or sixty-two years, as the case may be; (B) elected option
60 A provided in section twenty-four of this article; and (C)
61 nominated his or her surviving spouse as beneficiary. However,
62 the surviving spouse shall have the right to waive the annuity
63 provided in this section: *Provided*, That he or she executes a
64 valid and notarized waiver on a form provided by the board and
65 that the member or former member attests to the waiver. If the
66 waiver is presented to and accepted by the board, the member or
67 former member, may nominate a beneficiary who has an
68 insurable interest in the member's or former member's life. As
69 an alternative to annuity option A, the member or former
70 member may elect to have the preretirement death benefit paid
71 as a return of accumulated contributions in a lump sum amount
72 to any beneficiary or beneficiaries he or she chooses in the event
73 a waiver, as provided in this section, has been presented to and
74 accepted by the board.

75 (2) Whenever any member or former member who first
76 became a member of the retirement system after the effective
77 date of the amendments to this section made during the 2006
78 regular legislative session and who has ten or more years of
79 credited service and who is entitled to a deferred annuity,
80 pursuant to section twenty-one of this article, dies and leaves a
81 surviving spouse, the surviving spouse shall immediately receive

82 an annuity computed in the same manner in all respects as if the
83 member had: (A) Retired the day preceding the date of his or her
84 death, notwithstanding that he or she might not have attained age
85 sixty or sixty-two years, as the case may be; (B) elected option
86 A provided in section twenty-four of this article; and (C)
87 nominated his or her surviving spouse as beneficiary. However,
88 the surviving spouse shall have the right to waive the annuity
89 provided in this section: *Provided*, That he or she executes a
90 valid and notarized waiver on a form provided by the board and
91 that the member or former member attests to the waiver. If the
92 waiver is presented to and accepted by the board, the member or
93 former member may: (1) Elect to have the preretirement death
94 benefit paid in a lump sum amount, rather than annuity option A
95 provided in section twenty-four of this article, as a return of
96 accumulated contributions to any beneficiary or beneficiaries he
97 or she chooses; or (2) may name his or her surviving child, who
98 is financially dependent on the member by virtue of a permanent
99 mental or physical disability, as his or her sole beneficiary to
100 receive an annuity computed in the same manner in all respects
101 as if the member had: (A) Retired the day preceding the date of
102 his or her death, notwithstanding that he or she might not have
103 attained the age of sixty or sixty-two as the case may be; (B)
104 elected option A provided in section twenty-four of this article;
105 and (C) nominated his or her disabled child as beneficiary.

106 (c) In the event any member who has ten or more years of
107 credited service or any former member with ten or more years of
108 credited service and who is entitled to a deferred annuity,
109 pursuant to section twenty-one of this article: (1) Dies without
110 leaving surviving him or her a spouse; but (2) leaves surviving
111 him or her an infant child or children; and (3) does not have a
112 beneficiary nominated as provided in subsection (a) of this
113 section, the infant child or children are entitled to an annuity to
114 be calculated as follows: The annuity reserve shall be calculated
115 as though the member had retired as of the date of his or her

116 decease and elected a straight life annuity and the amount of the
117 annuity reserve shall be paid in equal monthly installments to the
118 member's infant child or children until the child or children
119 attain age twenty-one or sooner marry or become emancipated;
120 however, in no event shall any child or children receive more
121 than \$250 per month each. The annuity payments shall be
122 computed as of the date of the death of the member and the
123 amount of the annuity shall remain constant during the period of
124 payment. The annual amount of the annuities payable by this
125 section shall not exceed sixty percent of the deceased member's
126 final average salary.

127 (d) In the event any member or former member does not
128 have ten or more years of credited service, no preretirement
129 death annuity may be authorized, owed or awarded under this
130 section, except as provided in subdivision (4), subsection (a),
131 section fifteen of this article as amended during the 2005 regular
132 session of the Legislature.

133 (e) Any person qualified as a surviving dependent child
134 under this section, who is the surviving dependent child of a law-
135 enforcement officer who loses his or her life in the performance
136 of duty, in addition to any other benefits due under this or other
137 sections of this article is entitled to receive a scholarship to be
138 applied to the career development education of that person. This
139 sum, up to but not exceeding \$7,500 per year, shall be paid from
140 the fund to any higher education institution in this state, career-
141 technical education provider in this state or other entity in this
142 state approved by the board, to offset the expenses of tuition,
143 room and board, books, fees or other costs incurred in a course
144 of study at any of those institutions so long as the recipient
145 makes application to the board on an approved form and under
146 rules as provided by the board and maintains scholastic
147 eligibility as defined by the institution or the board. The board
148 may by appropriate rules define age requirements, physical and

149 mental requirements, scholastic eligibility, disbursement
150 methods, institutional qualifications and other requirements as
151 necessary and not inconsistent with this section.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

**ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM
ACT.**

**§7-14D-20. Additional death benefits and scholarships –
Dependent children.**

1 (a) In addition to the spouse death benefits in sections
2 eighteen and nineteen of this article, the surviving spouse is
3 entitled to receive and there shall be paid to the spouse \$100
4 monthly for each dependent child.

5 (b) If the surviving spouse dies or if there is no surviving
6 spouse, the fund shall pay monthly to each dependent child a
7 sum equal to one fourth of the surviving spouse’s entitlement
8 under either section nineteen or twenty of this article. If there is
9 neither a surviving spouse nor a dependent child, the fund shall
10 pay in equal monthly installments to the dependent parents of the
11 deceased member during their joint lifetimes a sum equal to the
12 amount which a surviving spouse, without children, would have
13 received: *Provided*, That when there is only one dependent
14 parent surviving, that parent is entitled to receive during his or
15 her lifetime one-half the amount which both parents, if living,
16 would have been entitled to receive: *Provided, however*, That if
17 there is no surviving spouse, dependent child nor dependent
18 parent of the deceased member the accumulated contributions
19 shall be paid to a named beneficiary or beneficiaries: *Provided*
20 *further*, That if there is no surviving spouse, dependent child, nor
21 dependent parent of the deceased member, nor any named
22 beneficiary or beneficiaries then the accumulated contributions
23 shall be paid to the estate of the deceased member.

24 (c) Any person qualifying as a dependent child under this
25 section, in addition to any other benefits due under this or other
26 sections of this article, is entitled to receive a scholarship to be
27 applied to the career development education of that person. This
28 sum, up to but not exceeding \$7,500 per year, shall be paid from
29 the fund to any higher education institution in this state, career-
30 technical education provider in this state or other entity in this
31 state approved by the board, to offset the expenses of tuition,
32 room and board, books, fees or other costs incurred in a course
33 of study at any of these institutions so long as the recipient
34 makes application to the board on an approved form and under
35 such rules as the board may provide, and maintains scholastic
36 eligibility as defined by the institution or the board. The board
37 may propose legislative rules for promulgation in accordance
38 with article three, chapter twenty-nine-a of this code which
39 define age requirements, physical and mental requirements,
40 scholastic eligibility, disbursement methods, institutional
41 qualifications and other requirements as necessary and not
42 inconsistent with this section.

CHAPTER 8. MUNICIPAL CORPORATIONS.

§8-22A-22. Additional death benefits and scholarships - dependent children.

1 (a) Except as provided in subsection (a), section nine of this
2 article, in addition to the spouse death benefits in this article, the
3 surviving spouse is entitled to receive and there shall be paid to
4 the spouse \$100 monthly for each dependent child.

5 (b) If the surviving spouse dies or if there is no surviving
6 spouse, the fund shall pay monthly to each dependent child a
7 sum equal to one hundred percent of the spouse's entitlement
8 under this article divided by the number of dependent children.
9 If there is neither a surviving spouse nor a dependent child, the
10 fund shall pay in equal monthly installments to the dependent

11 parents of the deceased member during their joint lifetimes a
12 sum equal to the amount which a surviving spouse, without
13 children, would have received: *Provided*, That when there is
14 only one dependent parent surviving, that parent is entitled to
15 receive during his or her lifetime one-half the amount which
16 both parents, if living, would have been entitled to receive:
17 *Provided, however*, That if there is no surviving spouse,
18 dependent child or dependent parent of the deceased member,
19 the accumulated contributions shall be paid to a named
20 beneficiary or beneficiaries: *Provided further*, That if there is no
21 surviving spouse, dependent child or dependent parent of the
22 deceased member, or any named beneficiary or beneficiaries,
23 then the accumulated contributions shall be paid to the estate of
24 the deceased member.

25 (c) Any person qualifying as a dependent child under this
26 section, in addition to any other benefits due under this or other
27 sections of this article, is entitled to receive a scholarship to be
28 applied to the career development education of that person. This
29 sum, up to but not exceeding \$7,500 per year, shall be paid from
30 the fund to any higher education institution in this state, career-
31 technical education provider in this state or other entity in this
32 state approved by the board, to offset the expenses of tuition,
33 room and board, books, fees or other costs incurred in a course
34 of study at any of these institutions so long as the recipient
35 makes application to the board on an approved form and under
36 rules provided by the board and maintains scholastic eligibility
37 as defined by the institution or the board. The board may propose
38 legislative rules for promulgation in accordance with article
39 three, chapter twenty-nine-a of this code which define age
40 requirements, physical and mental requirements, scholastic
41 eligibility, disbursement methods, institutional qualifications and
42 other requirements as necessary and not inconsistent with this
43 section.

CHAPTER 15. PUBLIC SAFETY.**ARTICLE 2. WEST VIRGINIA STATE POLICE.****§15-2-33. Awards and benefits to dependents of member when the member dies in performance of duty; to dependents of a duty disability retiree; dependent child scholarship and amount.**

1 (a) The surviving spouse or the dependent child or children
2 or dependent parent or parents of any member who has lost or
3 loses his or her life by reason of injury, illness or disease
4 resulting from an occupational risk or hazard inherent in or
5 peculiar to the service required of employees while the member
6 was or is engaged in the performance of his or her duties as an
7 employee of the agency, or if a retiree dies from any cause after
8 having been retired pursuant to the provisions of section twenty-
9 nine of this article, the surviving spouse or other dependent is
10 entitled to receive and shall be paid from the fund benefits as
11 follows: To the surviving spouse annually, in equal monthly
12 installments during his or her lifetime the greater of one or the
13 other of two amounts:

14 (1) An amount equal to five and one-half percent of the total
15 salary which was or would have been earned by the deceased
16 member or duty disability retiree during twenty-five years of
17 service based on the average earnings of the member or duty
18 disability retiree while employed by the agency; or

19 (2) The sum of \$6,000.

20 (b) In addition, the surviving spouse is entitled to receive
21 and shall be paid \$100 monthly for each dependent child or
22 children. If the surviving spouse dies or if there is no surviving
23 spouse, there shall be paid monthly to each dependent child or
24 children from the fund a sum equal to twenty-five percent of the
25 surviving spouse's entitlement. If there is no surviving spouse

26 and no dependent child or children, there shall be paid annually
27 in equal monthly installments from the fund to the dependent
28 parents of the deceased member or retirant during their joint
29 lifetimes a sum equal to the amount which a surviving spouse,
30 without children, would have received: *Provided*, That when
31 there is one dependent parent surviving, that parent is entitled to
32 receive during his or her lifetime one half the amount which both
33 parents, if living, would have been entitled to receive.

34 (c) Any person qualified as a surviving dependent child
35 under this section, in addition to any other benefits due under
36 this or other sections of this article, is entitled to receive a
37 scholarship to be applied to the career development education of
38 that person. This sum, up to but not exceeding \$7,500 per year,
39 shall be paid from the fund to any higher education institution in
40 this state, career-technical education provider in this state or
41 other entity in this state approved by the board, to offset the
42 expenses of tuition, room and board, books, fees or other costs
43 incurred in a course of study at any of those institutions so long
44 as the recipient makes application to the board on an approved
45 form and under rules as provided by the board and maintains
46 scholastic eligibility as defined by the institution or the board.
47 The board may by appropriate rules define age requirements,
48 physical and mental requirements, scholastic eligibility,
49 disbursement methods, institutional qualifications and other
50 requirements as necessary and not inconsistent with this section.

51 (d) A surviving spouse or dependent of an employee meeting
52 the requirements of this section is entitled to receive beneficiary
53 payments on the first day following the date the deceased
54 employee is removed from payroll by the agency. A surviving
55 spouse or dependent of a member who is not currently an
56 employee meeting the requirements of this section is entitled to
57 receive beneficiary payments on the first day following the date
58 of the deceased member's death. A surviving spouse or
59 dependent of a retirant meeting the requirements of this section

60 is entitled to receive beneficiary payments on the first day of the
61 month following the date of the deceased retirant's death. Upon
62 receipt of properly executed forms from the agency and the
63 surviving spouse or dependent, the board shall process the
64 surviving spouse or dependent benefit as soon as
65 administratively feasible.

66 (e) For the purposes of this section, the term "salary" does
67 not include any compensation paid for overtime service.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-12. Awards and benefits to dependents of employees or retirants - When employee dies in performance of duty, etc.; dependent child scholarship and amount.

1 The surviving spouse, the dependent child or children or
2 dependent parent or parents of any employee who has lost or
3 shall lose his or her life by reason of injury, illness or disease
4 resulting from an occupational risk or hazard inherent in or
5 peculiar to the service required of employees while the employee
6 was engaged in the performance of his or her duties as an
7 employee of the agency, or the survivor of a retirant who dies
8 from any cause after having been retired pursuant to the
9 provisions of section nine of this article, is entitled to receive and
10 shall be paid from the fund benefits as follows: To the surviving
11 spouse annually, in equal monthly installments during his or her
12 lifetime, one or the other of two amounts, which shall become
13 payable the first day of the month following the employee's or
14 retirant's death and which shall be the greater of:

15 (1) An amount equal to nine-tenths of the base salary
16 received in the preceding full twelve-month employment period
17 by the deceased employee: *Provided*, That if the employee had

18 not been employed with the agency for twelve full months prior
19 to his or her death, the amount of monthly salary shall be
20 annualized for the purpose of determining the benefit; or

21 (2) The sum of \$10,000.

22 In addition, the surviving spouse is entitled to receive and
23 shall be paid \$150 monthly for each dependent child. If the
24 surviving spouse dies or if there is no surviving spouse, there
25 shall be paid monthly to each dependent child or children from
26 the fund a sum equal to one third of the surviving spouse's
27 entitlement. If there is no surviving spouse and no dependent
28 child or children, there shall be paid annually in equal monthly
29 installments from the fund to the dependent parents of the
30 deceased member during their joint lifetimes a sum equal to the
31 amount which a surviving spouse, without children, would have
32 received: *Provided*, That when there is one dependent parent
33 surviving, that parent is entitled to receive during his or her
34 lifetime one half the amount which both parents, if living, would
35 have been entitled to receive: *Provided, however*, That if there
36 is no surviving spouse, dependent child or dependent parent of
37 the deceased member, the accumulated contributions shall be
38 paid to a named beneficiary or beneficiaries: *Provided further*,
39 That if there is no surviving spouse, dependent child, dependent
40 parent of the deceased member or any named beneficiary or
41 beneficiaries, then the accumulated contributions shall be paid
42 to the estate of the deceased member.

43 Any person qualifying as a surviving dependent child under
44 this section, in addition to any other benefits due under this or
45 other sections of this article, is entitled to receive a scholarship
46 to be applied to the career development education of that person.
47 This sum, up to but not exceeding \$7,500 per year, shall be paid
48 from the fund to any higher education institution in this state,
49 career-technical education provider in this state or other entity in
50 this state approved by the board to offset the expenses of tuition,

51 room and board, books, fees or other costs incurred in a course
52 of study at any of these institutions as long as the recipient
53 makes application to the board on an approved form and under
54 rules provided by the board and maintains scholastic eligibility
55 as defined by the institution or the board. The board may by
56 appropriate rules define age requirements, physical and mental
57 requirements, scholastic eligibility, disbursement methods,
58 institutional qualifications and other requirements as necessary
59 and not inconsistent with this section.

60 A surviving spouse or dependent of an employee meeting the
61 requirements of this section is entitled to receive beneficiary
62 payments on the first day of the month following the date the
63 deceased member is removed from payroll by the agency. A
64 surviving spouse or dependent of a member who is not currently
65 an employee meeting the requirements of this section is entitled
66 to receive beneficiary payments on the first day of the month
67 following the date of the deceased member's death. A surviving
68 spouse or dependent of a retirant meeting the requirements of
69 this section is entitled to receive beneficiary payments on the
70 first day of the month following the date of the deceased
71 retirant's death. Upon receipt of properly executed forms from
72 the agency and surviving spouse or dependent, the board shall
73 process the surviving spouse or dependent benefit as soon as
74 administratively feasible.

75 It is the intent of the Legislature that the levels of benefits
76 provided by operation of this section from the effective date of
77 the enactment of this section during the regular session of the
78 Legislature, 2005, be the same levels of benefits as provided by
79 this section as amended and reenacted during the fourth
80 extraordinary session of the Legislature, 2005. Accordingly, the
81 effective date of the operation of this section as amended and
82 reenacted during the fourth extraordinary session of the
83 Legislature, 2005, is expressly made retrospective to April 9,
84 2005.

CHAPTER 172

(Com. Sub. for H. B. 2470 - By Delegate M. Poling)

[Passed April 13, 2013; in effect July 1, 2013.]

[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §18-20-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-2-4 of said code; and to amend and reenact §18A-4-8 and §18A-4-8a of said code, all relating to school service personnel classification, compensation, duties, requirements and training; establishing certain service personnel classification titles and setting their wages; specifying employment requirements and duties for certain classifications titles; modifying certain service personnel classification titles; and establishing conditions for employer payment of and continuing education credit accrual for certain certification acquisition.

Be it enacted by the Legislature of West Virginia:

That §18-20-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18A-2-4 of said code be amended and reenacted; and that §18A-4-8 and §18A-4-8a of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-2. Providing suitable educational facilities, equipment and services.

- 1 (a) Each county board shall provide suitable educational
2 facilities, special equipment and special services that are

3 necessary. Special services include provisions and procedures
4 for finding and enumerating exceptional children of each type,
5 diagnosis by appropriate specialists who will certify the child's
6 need and eligibility for special education and make
7 recommendations for treatment and prosthesis as may alleviate
8 the disability, special teaching by qualified and specially trained
9 teachers, transportation, lunches and remedial therapeutic
10 services. Qualifications of teachers and therapists shall be in
11 accordance with standards prescribed or approved by the state
12 board.

13 (b) A county board may provide for educating resident
14 exceptional children by contracting with other counties or other
15 educational agencies which maintain special education facilities.
16 Fiscal matters shall follow policies approved by the state board.

17 (c) The county board shall provide a four-clock-hour
18 program of training for any teacher aide employed to assist
19 teachers in providing services to exceptional children under this
20 article prior to the assignment. The program shall consist of
21 training in areas specifically related to the education of
22 exceptional children, pursuant to rules of the state board. The
23 training shall occur during normal working hours and an
24 opportunity to be trained shall be provided to a service person
25 prior to filling a vacancy in accordance with the provisions of
26 section eight-b, article four, chapter eighteen-a of this code.

27 (d) The county board annually shall make available during
28 normal working hours to all regularly employed teachers' aides
29 twelve hours of training that satisfies the continuing education
30 requirements for the aides regarding:

31 (1) Providing services to children who have displayed
32 violent behavior or have demonstrated the potential for violent
33 behavior; and

34 (2) Providing services to children diagnosed as autistic or
35 with autism spectrum disorder. This training shall be structured
36 to permit the employee to qualify as an autism mentor after a
37 minimum of four years of training. The county board shall:

38 (A) Notify in writing all teachers' aides of the location, date
39 and time when training will be offered for qualification as an
40 autism mentor; and

41 (B) Reimburse any regularly employed or substitute
42 teacher's aide who elects to attend this training for one half of
43 the cost of the tuition.

44 (e) For any student whose individualized education plan
45 (IEP) or education plan established pursuant to Section 504 of
46 the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794,
47 requires the services of a sign support specialist or an
48 educational sign language interpreter I or II:

49 (1) Any educational sign language interpreter I or II assigned
50 to assist that student is a related service provider member of the
51 education team who participates in IEP meetings and works with
52 the team to implement the IEP;

53 (2) A sign support specialist may be assigned to a student
54 with an exceptionality other than deaf or hard of hearing if it is
55 determined that the student needs signs to support his or her
56 expressive communication; and

57 (3) A sign support specialist may be assigned to a student
58 who is deaf or hard of hearing in lieu of an interpreter only if an
59 educational sign language interpreter I or II is unavailable, and
60 the sign support specialist is executing a professional
61 development plan while actively seeking certification as an
62 educational sign language interpreter I or II. After two years the
63 sign support specialist may remain in the assignment only if an
64 educational sign language interpreter I or II remains unavailable,

65 and with an approved waiver by the West Virginia Department
66 of Education. An employee in this situation is entitled to full
67 payment of the costs of certification acquisition or renewal
68 pursuant to the certification renewal provisions of section four,
69 article two, chapter eighteen-a of this code.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

**§18A-2-4. Commercial driver's license for school personnel;
intrastate waiver for bus operators diagnosed with
diabetes mellitus requiring insulin; reimbursement
of electrician's and commercial driver's license
when required, and educational sign language
interpreter certification.**

1 (a) If a commercial driver's license is required as a condition
2 of employment for any school employee or qualified applicant
3 who becomes an employee by a county board the cost is paid in
4 full by the county board.

5 A county board may not require any employee or applicant
6 who becomes an employee of the board to pay the cost of
7 acquiring a commercial driver's license as a condition of
8 employment.

9 (b) The Division of Motor Vehicles shall accept the West
10 Virginia Department of Education physical and psychomotor test
11 result forms in lieu of the Division of Motor Vehicles vision
12 report form.

13 (c) A school bus operator who is currently employed by a
14 county board or who is otherwise subject to state board rules
15 governing school bus operators and who is diagnosed with
16 diabetes mellitus requiring insulin is not ineligible for
17 employment as a school bus operator because of the diagnosis if

18 the operator is issued a passenger endorsement for his or her
19 commercial driver license through the intrastate waiver program
20 pertaining to diabetes of the West Virginia Division of Motor
21 Vehicles, subject to the following:

22 (1) A copy of the information required to be submitted to the
23 Division of Motor Vehicles for waiver application and proof of
24 passenger endorsement under the waiver program is submitted
25 to his or her employer; and

26 (2) The operator remains in compliance with the stipulations
27 of and grounds for eligibility for the intrastate waiver.

28 (d) If a county board requires of any employee who is
29 employed as an electrician any license renewal when the
30 employee is exempt from renewing the license pursuant to
31 section three, article three-b, chapter twenty-nine of this code,
32 the cost of the license renewal is paid in full by the county board.

33 (e) The cost of certification renewal and satisfying the
34 requirements of the West Virginia Registry of Interpreters is
35 paid in full by the employer for any service person who is:

36 (1) Employed as an educational sign language interpreter I
37 or II and is required to complete any testing, training or
38 continuing education in order to renew or maintain certification
39 at that level;

40 (2) Employed as an educational sign language interpreter I
41 and is required to complete any testing, training or continuing
42 education to advance to an educational sign language interpreter
43 II; or

44 (3) Employed as a sign support specialist and is required to
45 complete any testing, training or continuing education in order
46 to advance to an educational sign language interpreter I or II.

47 (f) For any service person required to hold certification as a
48 condition of employment, any time devoted to acquiring or
49 maintaining the certification, including instructional time and
50 training, constitutes hours of continuing education for purposes
51 of meeting the annual continuing education requirements in state
52 board policy.

53 (g) Compliance with or failure to comply by a health care
54 provider licensed and authorized pursuant to chapter thirty of
55 this code, with the reporting requirements of the Division of
56 Motor Vehicles regarding the provisions of subsection (c) of this
57 section does not constitute negligence, nor may compliance or
58 noncompliance with the requirements of this section be
59 admissible as evidence of negligence in any civil or criminal
60 action.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.

1 (a) The purpose of this section is to establish an employment
2 term and class titles for service personnel. The employment term
3 for service personnel may not be less than ten months. A month
4 is defined as twenty employment days. The county board may
5 contract with all or part of these service personnel for a longer
6 term.

7 (b) Service personnel employed on a yearly or twelve-month
8 basis may be employed by calendar months. Whenever there is
9 a change in job assignment during the school year, the minimum
10 pay scale and any county supplement are applicable.

11 (c) Service personnel employed in the same classification for
12 more than the two hundred-day minimum employment term are
13 paid for additional employment at a daily rate of not less than the

14 daily rate paid for the two hundred-day minimum employment
15 term.

16 (d) A service person may not be required to report for work
17 more than five days per week without his or her agreement, and
18 no part of any working day may be accumulated by the employer
19 for future work assignments, unless the employee agrees thereto.

20 (e) If a service person whose regular work week is scheduled
21 from Monday through Friday agrees to perform any work
22 assignments on a Saturday or Sunday, the service person is paid
23 for at least one-half day of work for each day he or she reports
24 for work. If the service person works more than three and
25 one-half hours on any Saturday or Sunday, he or she is paid for
26 at least a full day of work for each day.

27 (f) A custodian, aide, maintenance, office and school lunch
28 service person required to work a daily work schedule that is
29 interrupted is paid additional compensation in accordance with
30 this subsection.

31 (1) A maintenance person means a person who holds a
32 classification title other than in a custodial, aide, school lunch,
33 office or transportation category as provided in section one,
34 article one of this chapter.

35 (2) A service person's schedule is considered to be
36 interrupted if he or she does not work a continuous period in one
37 day. Aides are not regarded as working an interrupted schedule
38 when engaged exclusively in the duties of transporting students;

39 (3) The additional compensation provided in this subsection:

40 (A) Is equal to at least one eighth of a service person's total
41 salary as provided by the state minimum pay scale and any
42 county pay supplement; and

43 (B) Is payable entirely from county board funds.

44 (g) When there is a change in classification or when a
45 service person meets the requirements of an advanced
46 classification, his or her salary shall be made to comply with the
47 requirements of this article and any county salary schedule in
48 excess of the minimum requirements of this article, based upon
49 the service person's advanced classification and allowable years
50 of employment.

51 (h) A service person's contract, as provided in section five,
52 article two of this chapter, shall state the appropriate monthly
53 salary the employee is to be paid, based on the class title as
54 provided in this article and on any county salary schedule in
55 excess of the minimum requirements of this article.

56 (i) The column heads of the state minimum pay scale and
57 class titles, set forth in section eight-a of this article, are defined
58 as follows:

59 (1) "Pay grade" means the monthly salary applicable to class
60 titles of service personnel;

61 (2) "Years of employment" means the number of years
62 which an employee classified as a service person has been
63 employed by a county board in any position prior to or
64 subsequent to the effective date of this section and includes
65 service in the Armed Forces of the United States, if the
66 employee was employed at the time of his or her induction. For
67 the purpose of section eight-a of this article, years of
68 employment is limited to the number of years shown and
69 allowed under the state minimum pay scale as set forth in section
70 eight-a of this article;

71 (3) "Class title" means the name of the position or job held
72 by a service person;

73 (4) "Accountant I" means a person employed to maintain
74 payroll records and reports and perform one or more operations
75 relating to a phase of the total payroll;

76 (5) "Accountant II" means a person employed to maintain
77 accounting records and to be responsible for the accounting
78 process associated with billing, budgets, purchasing and related
79 operations;

80 (6) "Accountant III" means a person employed in the county
81 board office to manage and supervise accounts payable, payroll
82 procedures, or both;

83 (7) "Accounts payable supervisor" means a person employed
84 in the county board office who has primary responsibility for the
85 accounts payable function and who either has completed twelve
86 college hours of accounting courses from an accredited
87 institution of higher education or has at least eight years of
88 experience performing progressively difficult accounting tasks.
89 Responsibilities of this class title may include supervision of
90 other personnel;

91 (8) "Aide I" means a person selected and trained for a
92 teacher-aide classification such as monitor aide, clerical aide,
93 classroom aide or general aide;

94 (9) "Aide II" means a service person referred to in the "Aide
95 I" classification who has completed a training program approved
96 by the state board, or who holds a high school diploma or has
97 received a general educational development certificate. Only a
98 person classified in an Aide II class title may be employed as an
99 aide in any special education program;

100 (10) "Aide III" means a service person referred to in the
101 "Aide I" classification who holds a high school diploma or a
102 general educational development certificate; and

103 (A) Has completed six semester hours of college credit at an
104 institution of higher education; or

105 (B) Is employed as an aide in a special education program
106 and has one year's experience as an aide in special education;

107 (11) "Aide IV" means a service person referred to in the
108 "Aide I" classification who holds a high school diploma or a
109 general educational development certificate; and

110 (A) Has completed eighteen hours of state board-approved
111 college credit at a regionally accredited institution of higher
112 education; or

113 (B) Has completed fifteen hours of state board-approved
114 college credit at a regionally accredited institution of higher
115 education; and has successfully completed an in-service training
116 program determined by the State Board to be the equivalent of
117 three hours of college credit;

118 (12) "Audiovisual technician" means a person employed to
119 perform minor maintenance on audiovisual equipment, films,
120 and supplies and who fills requests for equipment;

121 (13) "Auditor" means a person employed to examine and
122 verify accounts of individual schools and to assist schools and
123 school personnel in maintaining complete and accurate records
124 of their accounts;

125 (14) "Autism mentor" means a person who works with
126 autistic students and who meets standards and experience to be
127 determined by the State Board. A person who has held or holds
128 an aide title and becomes employed as an autism mentor shall
129 hold a multiclassification status that includes both aide and
130 autism mentor titles, in accordance with section eight-b of this
131 article;

132 (15) "Braille specialist" means a person employed to provide
133 braille assistance to students. A service person who has held or
134 holds an aide title and becomes employed as a braille specialist
135 shall hold a multiclassification status that includes both aide and
136 braille specialist title, in accordance with section eight-b of this
137 article;

138 (16) "Bus operator" means a person employed to operate
139 school buses and other school transportation vehicles as
140 provided by the state board;

141 (17) "Buyer" means a person employed to review and write
142 specifications, negotiate purchase bids and recommend purchase
143 agreements for materials and services that meet predetermined
144 specifications at the lowest available costs;

145 (18) "Cabinetmaker" means a person employed to construct
146 cabinets, tables, bookcases and other furniture;

147 (19) "Cafeteria manager" means a person employed to direct
148 the operation of a food services program in a school, including
149 assigning duties to employees, approving requisitions for
150 supplies and repairs, keeping inventories, inspecting areas to
151 maintain high standards of sanitation, preparing financial reports
152 and keeping records pertinent to food services of a school;

153 (20) "Carpenter I" means a person classified as a carpenter's
154 helper;

155 (21) "Carpenter II" means a person classified as a
156 journeyman carpenter;

157 (22) "Chief mechanic" means a person employed to be
158 responsible for directing activities which ensure that student
159 transportation or other county board-owned vehicles are properly
160 and safely maintained;

161 (23) "Clerk I" means a person employed to perform clerical
162 tasks;

163 (24) "Clerk II" means a person employed to perform general
164 clerical tasks, prepare reports and tabulations, and operate office
165 machines;

166 (25) "Computer operator" means a qualified person employ-
167 ed to operate computers;

168 (26) "Cook I" means a person employed as a cook's helper;

169 (27) "Cook II" means a person employed to interpret menus
170 and to prepare and serve meals in a food service program of a
171 school. This definition includes a service person who has been
172 employed as a "Cook I" for a period of four years;

173 (28) "Cook III" means a person employed to prepare and
174 serve meals, make reports, prepare requisitions for supplies,
175 order equipment and repairs for a food service program of a
176 school system;

177 (29) "Crew leader" means a person employed to organize the
178 work for a crew of maintenance employees to carry out assigned
179 projects;

180 (30) "Custodian I" means a person employed to keep
181 buildings clean and free of refuse;

182 (31) "Custodian II" means a person employed as a watchman
183 or groundsman;

184 (32) "Custodian III" means a person employed to keep
185 buildings clean and free of refuse, to operate the heating or
186 cooling systems and to make minor repairs;

187 (33) “Custodian IV” means a person employed as a head
188 custodian. In addition to providing services as defined in
189 “Custodian III” duties may include supervising other custodian
190 personnel;

191 (34) “Director or coordinator of services” means an
192 employee of a county board who is assigned to direct a
193 department or division.

194 (A) Nothing in this subdivision prohibits a professional
195 person or a professional educator from holding this class title;

196 (B) Professional personnel holding this class title may not be
197 defined or classified as service personnel unless the professional
198 person held a service personnel title under this section prior to
199 holding the class title of “director or coordinator of services”;

200 (C) The director or coordinator of services is classified either
201 as a professional person or a service person for state aid formula
202 funding purposes;

203 (D) Funding for the position of director or coordinator of
204 services is based upon the employment status of the director or
205 coordinator either as a professional person or a service person;
206 and

207 (E) A person employed under the class title “director or
208 coordinator of services” may not be exclusively assigned to
209 perform the duties ascribed to any other class title as defined in
210 this subsection: *Provided*, That nothing in this paragraph
211 prohibits a person in this position from being multiclassified;

212 (35) “Draftsman” means a person employed to plan, design
213 and produce detailed architectural/engineering drawings;

214 (36) “Early Childhood Classroom Assistant Teacher -
215 Temporary Authorization” means a person who does not possess

216 minimum requirements for the permanent authorization
217 requirements, but is enrolled in and pursuing requirements;

218 (37) “Early Childhood Classroom Assistant Teacher -
219 Permanent Authorization” means a person who has completed
220 the minimum requirements for a state-awarded certificate for
221 early childhood classroom assistant teachers that meet or exceed
222 the requirements for a child development associate. Equivalency
223 for the West Virginia Department of Education will be
224 determined as the child development associate or the West
225 Virginia Apprenticeship for Child Development Specialists;

226 (38) “Early Childhood Classroom Assistant Teacher -
227 Paraprofessional Certificate” means a person who has completed
228 permanent authorization requirements, as well as additional
229 requirements comparable to current paraprofessional certificate;

230 (39) “Educational Sign Language Interpreter I” means a
231 person employed to provide communication access across all
232 educational environments to students who are deaf or hard of
233 hearing, and who holds the Initial Paraprofessional Certificate –
234 Educational Interpreter pursuant to state board policy;

235 (40) “Educational Sign Language Interpreter II” means a
236 person employed to provide communication access across all
237 educational environments to students who are deaf or hard of
238 hearing, and who holds the Permanent Paraprofessional
239 Certificate – Educational Interpreter pursuant to state board
240 policy;

241 (41) “Electrician I” means a person employed as an
242 apprentice electrician helper or one who holds an electrician
243 helper license issued by the State Fire Marshal;

244 (42) “Electrician II” means a person employed as an
245 electrician journeyman or one who holds a journeyman
246 electrician license issued by the State Fire Marshal;

247 (43) "Electronic technician I" means a person employed at
248 the apprentice level to repair and maintain electronic equipment;

249 (44) "Electronic technician II" means a person employed at
250 the journeyman level to repair and maintain electronic
251 equipment;

252 (45) "Executive secretary" means a person employed as
253 secretary to the county school superintendent or as a secretary
254 who is assigned to a position characterized by significant
255 administrative duties;

256 (46) "Food services supervisor" means a qualified person
257 who is not a professional person or professional educator as
258 defined in section one, article one of this chapter. The food
259 services supervisor is employed to manage and supervise a
260 county school system's food service program. The duties include
261 preparing in-service training programs for cooks and food
262 service employees, instructing personnel in the areas of quantity
263 cooking with economy and efficiency and keeping aggregate
264 records and reports;

265 (47) "Foreman" means a skilled person employed to
266 supervise personnel who work in the areas of repair and
267 maintenance of school property and equipment;

268 (48) "General maintenance" means a person employed as a
269 helper to skilled maintenance employees, and to perform minor
270 repairs to equipment and buildings of a county school system;

271 (49) "Glazier" means a person employed to replace glass or
272 other materials in windows and doors and to do minor carpentry
273 tasks;

274 (50) "Graphic artist" means a person employed to prepare
275 graphic illustrations;

276 (51) "Groundsman" means a person employed to perform
277 duties that relate to the appearance, repair and general care of
278 school grounds in a county school system. Additional
279 assignments may include the operation of a small heating plant
280 and routine cleaning duties in buildings;

281 (52) "Handyman" means a person employed to perform
282 routine manual tasks in any operation of the county school
283 system;

284 (53) "Heating and air conditioning mechanic I" means a
285 person employed at the apprentice level to install, repair and
286 maintain heating and air conditioning plants and related
287 electrical equipment;

288 (54) "Heating and air conditioning mechanic II" means a
289 person employed at the journeyman level to install, repair and
290 maintain heating and air conditioning plants and related
291 electrical equipment;

292 (55) "Heavy equipment operator" means a person employed
293 to operate heavy equipment;

294 (56) "Inventory supervisor" means a person employed to
295 supervise or maintain operations in the receipt, storage,
296 inventory and issuance of materials and supplies;

297 (57) "Key punch operator" means a qualified person
298 employed to operate key punch machines or verifying machines;

299 (58) "Licensed practical nurse" means a nurse, licensed by
300 the West Virginia Board of Examiners for Licensed Practical
301 Nurses, employed to work in a public school under the
302 supervision of a school nurse;

303 (59) "Locksmith" means a person employed to repair and
304 maintain locks and safes;

305 (60) "Lubrication man" means a person employed to
306 lubricate and service gasoline or diesel-powered equipment of a
307 county school system;

308 (61) "Machinist" means a person employed to perform
309 machinist tasks which include the ability to operate a lathe,
310 planer, shaper, threading machine and wheel press. A person
311 holding this class title also should have the ability to work from
312 blueprints and drawings;

313 (62) "Mail clerk" means a person employed to receive, sort,
314 dispatch, deliver or otherwise handle letters, parcels and other
315 mail;

316 (63) "Maintenance clerk" means a person employed to
317 maintain and control a stocking facility to keep adequate tools
318 and supplies on hand for daily withdrawal for all school
319 maintenance crafts;

320 (64) "Mason" means a person employed to perform tasks
321 connected with brick and block laying and carpentry tasks
322 related to these activities;

323 (65) "Mechanic" means a person employed to perform
324 skilled duties independently in the maintenance and repair of
325 automobiles, school buses and other mechanical and mobile
326 equipment to use in a county school system;

327 (66) "Mechanic assistant" means a person employed as a
328 mechanic apprentice and helper;

329 (67) "Multiclassification" means a person employed to
330 perform tasks that involve the combination of two or more class
331 titles in this section. In these instances the minimum salary scale
332 is the higher pay grade of the class titles involved;

333 (68) "Office equipment repairman I" means a person
334 employed as an office equipment repairman apprentice or helper;

335 (69) "Office equipment repairman II" means a person
336 responsible for servicing and repairing all office machines and
337 equipment. A person holding this class title is responsible for the
338 purchase of parts necessary for the proper operation of a
339 program of continuous maintenance and repair;

340 (70) "Painter" means a person employed to perform duties
341 painting, finishing and decorating wood, metal and concrete
342 surfaces of buildings, other structures, equipment, machinery
343 and furnishings of a county school system;

344 (71) "Paraprofessional" means a person certified pursuant to
345 section two-a, article three of this chapter to perform duties in a
346 support capacity including, but not limited to, facilitating in the
347 instruction and direct or indirect supervision of students under
348 the direction of a principal, a teacher or another designated
349 professional educator.

350 (A) A person employed on the effective date of this section
351 in the position of an aide may not be subject to a reduction in
352 force or transferred to create a vacancy for the employment of a
353 paraprofessional;

354 (B) A person who has held or holds an aide title and
355 becomes employed as a paraprofessional shall hold a
356 multiclassification status that includes both aide and
357 paraprofessional titles in accordance with section eight-b of this
358 article; and

359 (C) When a service person who holds an aide title becomes
360 certified as a paraprofessional and is required to perform duties
361 that may not be performed by an aide without paraprofessional
362 certification, he or she shall receive the paraprofessional title pay
363 grade;

364 (72) "Payroll supervisor" means a person employed in the
365 county board office who has primary responsibility for the
366 payroll function and who either has completed twelve college
367 hours of accounting from an accredited institution of higher
368 education or has at least eight years of experience performing
369 progressively difficult accounting tasks. Responsibilities of this
370 class title may include supervision of other personnel;

371 (73) "Plumber I" means a person employed as an apprentice
372 plumber and helper;

373 (74) "Plumber II" means a person employed as a journeyman
374 plumber;

375 (75) "Printing operator" means a person employed to operate
376 duplication equipment, and to cut, collate, staple, bind and
377 shelf materials as required;

378 (76) "Printing supervisor" means a person employed to
379 supervise the operation of a print shop;

380 (77) "Programmer" means a person employed to design and
381 prepare programs for computer operation;

382 (78) "Roofing/sheet metal mechanic" means a person
383 employed to install, repair, fabricate and maintain roofs, gutters,
384 flashing and duct work for heating and ventilation;

385 (79) "Sanitation plant operator" means a person employed
386 to operate and maintain a water or sewage treatment plant to
387 ensure the safety of the plant's effluent for human consumption
388 or environmental protection;

389 (80) "School bus supervisor" means a qualified person:

390 (A) Employed to assist in selecting school bus operators and
391 routing and scheduling school buses, operate a bus when needed,

392 relay instructions to bus operators, plan emergency routing of
393 buses and promote good relationships with parents, students, bus
394 operators and other employees; and

395 (B) Certified to operate a bus or previously certified to
396 operate a bus;

397 (81) "Secretary I" means a person employed to transcribe
398 from notes or mechanical equipment, receive callers, perform
399 clerical tasks, prepare reports and operate office machines;

400 (82) "Secretary II" means a person employed in any
401 elementary, secondary, kindergarten, nursery, special education,
402 vocational, or any other school as a secretary. The duties may
403 include performing general clerical tasks; transcribing from
404 notes; stenotype, mechanical equipment or a sound-producing
405 machine; preparing reports; receiving callers and referring them
406 to proper persons; operating office machines; keeping records
407 and handling routine correspondence. Nothing in this subdivision
408 prevents a service person from holding or being elevated to a
409 higher classification;

410 (83) "Secretary III" means a person assigned to the county
411 board office administrators in charge of various instructional,
412 maintenance, transportation, food services, operations and health
413 departments, federal programs or departments with particular
414 responsibilities in purchasing and financial control or any person
415 who has served for eight years in a position which meets the
416 definition of "secretary II" or "secretary III";

417 (84) "Sign Support Specialist" means a person employed to
418 provide sign supported speech assistance to students who are
419 able to access environments through audition. A person who has
420 held or holds an aide title and becomes employed as a sign
421 support specialist shall hold a multi-classification status that

422 includes both aide and sign support specialist titles, in
423 accordance with section eight-b of this article.

424 (85) "Supervisor of maintenance" means a skilled person
425 who is not a professional person or professional educator as
426 defined in section one, article one of this chapter. The
427 responsibilities include directing the upkeep of buildings and
428 shops, and issuing instructions to subordinates relating to
429 cleaning, repairs and maintenance of all structures and
430 mechanical and electrical equipment of a county board;

431 (86) "Supervisor of transportation" means a qualified person
432 employed to direct school transportation activities properly and
433 safely, and to supervise the maintenance and repair of vehicles,
434 buses and other mechanical and mobile equipment used by the
435 county school system. After July 1, 2010, all persons employed
436 for the first time in a position with this classification title or in
437 a multi-classification position that includes this title shall have
438 five years of experience working in the transportation
439 department of a county board. Experience working in the
440 transportation department consists of serving as a bus operator,
441 bus aide, assistant mechanic, mechanic, chief mechanic or in a
442 clerical position within the transportation department;

443 (87) "Switchboard operator-receptionist" means a person
444 employed to refer incoming calls, to assume contact with the
445 public, to direct and to give instructions as necessary, to operate
446 switchboard equipment and to provide clerical assistance;

447 (88) "Truck driver" means a person employed to operate
448 light or heavy duty gasoline and diesel-powered vehicles;

449 (89) "Warehouse clerk" means a person employed to be
450 responsible for receiving, storing, packing and shipping goods;

451 (90) "Watchman" means a person employed to protect
452 school property against damage or theft. Additional assignments

453 may include operation of a small heating plant and routine
454 cleaning duties;

455 (91) "Welder" means a person employed to provide
456 acetylene or electric welding services for a school system; and

457 (92) "WVEIS data entry and administrative clerk" means a
458 person employed to work under the direction of a school
459 principal to assist the school counselor or counselors in the
460 performance of administrative duties, to perform data entry tasks
461 on the West Virginia Education Information System, and to
462 perform other administrative duties assigned by the principal.

463 (j) Notwithstanding any provision in this code to the
464 contrary, and in addition to the compensation provided for
465 service personnel in section eight-a of this article, each service
466 person is entitled to all service personnel employee rights,
467 privileges and benefits provided under this or any other chapter
468 of this code without regard to the employee's hours of
469 employment or the methods or sources of compensation.

470 (k) A service person whose years of employment exceeds the
471 number of years shown and provided for under the state
472 minimum pay scale set forth in section eight-a of this article may
473 not be paid less than the amount shown for the maximum years
474 of employment shown and provided for in the classification in
475 which he or she is employed.

476 (l) Each county board shall review each service person's job
477 classification annually and shall reclassify all service persons as
478 required by the job classifications. The state superintendent may
479 withhold state funds appropriated pursuant to this article for
480 salaries for service personnel who are improperly classified by
481 the county boards. Further, the state superintendent shall order
482 a county board to correct immediately any improper
483 classification matter and, with the assistance of the Attorney

484 General, shall take any legal action necessary against any county
485 board to enforce the order.

486 (m) Without his or her written consent, a service person may
487 not be:

488 (1) Reclassified by class title; or

489 (2) Relegated to any condition of employment which would
490 result in a reduction of his or her salary, rate of pay,
491 compensation or benefits earned during the current fiscal year;
492 or for which he or she would qualify by continuing in the same
493 job position and classification held during that fiscal year and
494 subsequent years.

495 (n) Any county board failing to comply with the provisions
496 of this article may be compelled to do so by mandamus and is
497 liable to any party prevailing against the board for court costs
498 and the prevailing party's reasonable attorney fee, as determined
499 and established by the court.

500 (o) Notwithstanding any provision of this code to the
501 contrary, a service person who holds a continuing contract in a
502 specific job classification and who is physically unable to
503 perform the job's duties as confirmed by a physician chosen by
504 the employee, shall be given priority status over any employee
505 not holding a continuing contract in filling other service
506 personnel job vacancies if the service person is qualified as
507 provided in section eight-e of this article.

508 (p) Any person employed in an aide position on the effective
509 date of this section may not be transferred or subject to a
510 reduction in force for the purpose of creating a vacancy for the
511 employment of a licensed practical nurse.

512 (q) Without the written consent of the service person, a
513 county board may not establish the beginning work station for a

514 bus operator or transportation aide at any site other than a county
515 board-owned facility with available parking. The workday of the
516 bus operator or transportation aide commences at the bus at the
517 designated beginning work station and ends when the employee
518 is able to leave the bus at the designated beginning work station,
519 unless he or she agrees otherwise in writing. The application or
520 acceptance of a posted position may not be construed as the
521 written consent referred to in this subsection.

522 (r) Itinerant status means a service person who does not have
523 a fixed work site and may be involuntarily reassigned to another
524 work site. A service person is considered to hold itinerant status
525 if he or she has bid upon a position posted as itinerant or has
526 agreed to accept this status. A county board may establish
527 positions with itinerant status only within the aide and autism
528 mentor classification categories and only when the job duties
529 involve exceptional students. A service person with itinerant
530 status may be assigned to a different work site upon written
531 notice ten days prior to the reassignment without the consent of
532 the employee and without posting the vacancy. A service person
533 with itinerant status may be involuntarily reassigned no more
534 than twice during the school year. At the conclusion of each
535 school year, the county board shall post and fill, pursuant to
536 section eight-b of this article, all positions that have been filled
537 without posting by a service person with itinerant status. A
538 service person who is assigned to a beginning and ending work
539 site and travels at the expense of the county board to other work
540 sites during the daily schedule, is not considered to hold itinerant
541 status.

542 (s) Any service person holding a classification title on June
543 30, 2013, that is removed from the classification schedule
544 pursuant to amendment and reenactment of this section in the
545 year 2013, has his or her employment contract revised as
546 follows:

547 (1) Any service person holding the Braille or Sign Language
548 Specialist classification title has that classification title renamed
549 on his or her employment contract as either Braille Specialist or
550 Sign Support Specialist. This action does not result in a loss or
551 reduction of salary or supplement by any employee. Any
552 seniority earned in the Braille or Sign Language Specialist
553 classification prior to July 1, 2013, continues to be credited as
554 seniority earned in the Braille Specialist or Sign Support
555 Specialist classification;

556 (2) Any service person holding the Paraprofessional
557 classification title and holding the Initial Paraprofessional
558 Certificate – Educational Interpreter has the title Educational
559 Sign Language Interpreter I added to his or her employment
560 contract. This action does not result in a loss or reduction of
561 salary or supplement by any employee. Any seniority earned in
562 the Paraprofessional classification prior to July 1, 2013,
563 continues to be credited as seniority earned in the Educational
564 Sign Language Interpreter I classification; and

565 (3) Any service person holding the Paraprofessional
566 classification title and holding the Permanent Paraprofessional
567 Certificate – Educational Interpreter has the title Educational
568 Sign Language Interpreter II added to his or her employment
569 contract. This action does not result in a loss or reduction of
570 salary or supplement by any employee. Any seniority earned in
571 the Paraprofessional classification prior to July 1, 2013,
572 continues to be credited as seniority earned in the Educational
573 Sign Language Interpreter II classification.

§18A-4-8a. Service personnel minimum monthly salaries.

1 (a) The minimum monthly pay for each service employee
2 shall be as follows:

3 (1) Beginning July 1, 2011, and continuing thereafter, the
4 minimum monthly pay for each service employee whose

5 employment is for a period of more than three and one-half
 6 hours a day shall be at least the amounts indicated in the State
 7 Minimum Pay Scale Pay Grade and the minimum monthly pay
 8 for each service employee whose employment is for a period of
 9 three and one-half hours or less a day shall be at least one half
 10 the amount indicated in the State Minimum Pay Scale Pay Grade
 11 set forth in this subdivision.

12 STATE MINIMUM PAY SCALE PAY GRADE

13 Years

14	Exp.	Pay Grade							
		A	B	C	D	E	F	G	H
15	0	1,627	1,648	1,689	1,741	1,793	1,855	1,886	1,958
16	1	1,659	1,680	1,721	1,773	1,825	1,887	1,918	1,990
17	2	1,691	1,712	1,753	1,805	1,857	1,919	1,950	2,022
18	3	1,723	1,744	1,785	1,837	1,889	1,951	1,982	2,054
19	4	1,755	1,776	1,817	1,869	1,921	1,983	2,014	2,087
20	5	1,787	1,808	1,849	1,901	1,953	2,015	2,046	2,119
21	6	1,819	1,840	1,882	1,933	1,985	2,047	2,078	2,151
22	7	1,852	1,872	1,914	1,965	2,017	2,079	2,110	2,183
23	8	1,884	1,904	1,946	1,997	2,049	2,111	2,142	2,215
24	9	1,916	1,936	1,978	2,030	2,081	2,143	2,174	2,247
25	10	1,948	1,969	2,010	2,062	2,113	2,176	2,207	2,279
26	11	1,980	2,001	2,042	2,094	2,145	2,208	2,239	2,311
27	12	2,012	2,033	2,074	2,126	2,178	2,240	2,271	2,343
28	13	2,044	2,065	2,106	2,158	2,210	2,272	2,303	2,375
29	14	2,076	2,097	2,138	2,190	2,242	2,304	2,335	2,407
30	15	2,108	2,129	2,170	2,222	2,274	2,336	2,367	2,439
31	16	2,140	2,161	2,202	2,254	2,306	2,368	2,399	2,472

32	17	2,172	2,193	2,235	2,286	2,338	2,400	2,431	2,504
33	18	2,204	2,225	2,267	2,318	2,370	2,432	2,463	2,536
34	19	2,237	2,257	2,299	2,350	2,402	2,464	2,495	2,568
35	20	2,269	2,289	2,331	2,383	2,434	2,496	2,527	2,601
36	21	2,301	2,321	2,363	2,415	2,466	2,528	2,559	2,634
37	22	2,333	2,354	2,395	2,447	2,498	2,561	2,593	2,666
38	23	2,365	2,386	2,427	2,479	2,531	2,594	2,625	2,699
39	24	2,397	2,418	2,459	2,511	2,563	2,627	2,658	2,732
40	25	2,429	2,450	2,491	2,543	2,596	2,659	2,691	2,764
41	26	2,461	2,482	2,523	2,576	2,629	2,692	2,723	2,797
42	27	2,493	2,514	2,555	2,608	2,661	2,724	2,756	2,829
43	28	2,525	2,546	2,588	2,641	2,694	2,757	2,789	2,863
44	29	2,557	2,579	2,621	2,673	2,726	2,790	2,821	2,896
45	30	2,591	2,611	2,654	2,706	2,759	2,822	2,854	2,928
46	31	2,623	2,644	2,687	2,739	2,792	2,855	2,887	2,961
47	32	2,656	2,676	2,719	2,772	2,824	2,888	2,919	2,994
48	33	2,689	2,709	2,752	2,805	2,857	2,920	2,953	3,026
49	34	2,721	2,743	2,785	2,838	2,890	2,954	2,986	3,059
50	35	2,754	2,775	2,817	2,870	2,923	2,987	3,018	3,092
51	36	2,787	2,808	2,850	2,903	2,956	3,019	3,051	3,124
52	37	2,819	2,841	2,883	2,936	2,989	3,052	3,083	3,157
53	38	2,852	2,873	2,915	2,968	3,021	3,084	3,116	3,190
54	39	2,885	2,906	2,948	3,001	3,054	3,117	3,149	3,222
55	40	2,917	2,939	2,980	3,033	3,087	3,150	3,181	3,256

56 (2) Each service employee shall receive the amount
57 prescribed in the Minimum Pay Scale in accordance with the
58 provisions of this subsection according to their class title and pay
59 grade as set forth in this subdivision:

60	CLASS TITLE	PAY GRADE
61	Accountant I.....	D
62	Accountant II.....	E
63	Accountant III.....	F
64	Accounts Payable Supervisor.....	G
65	Aide I.....	A
66	Aide II.....	B
67	Aide III.....	C
68	Aide IV.....	D
69	Audiovisual Technician.....	C
70	Auditor.....	G
71	Autism Mentor.....	F
72	Braille Specialist.....	E
73	Bus Operator.....	D
74	Buyer.....	F
75	Cabinetmaker.....	G
76	Cafeteria Manager.....	D
77	Carpenter I.....	E
78	Carpenter II.....	F
79	Chief Mechanic.....	G

80	Clerk I.	B
81	Clerk II.	C
82	Computer Operator.	E
83	Cook I.	A
84	Cook II.	B
85	Cook III.	C
86	Crew Leader.	F
87	Custodian I.	A
88	Custodian II.	B
89	Custodian III.	C
90	Custodian IV.	D
91	Director or Coordinator of Services.	H
92	Draftsman.	D
93	Early Childhood Classroom Assistant Teacher -	
94	Temporary Authorization.	E
95	Early Childhood Classroom Assistant Teacher -	
96	Permanent Authorization.	E
97	Early Childhood Classroom Assistant Teacher -	
98	Paraprofessional Certificate.	F
99	Educational Sign Language Interpreter I.	F
100	Educational Sign Language Interpreter II.	G

101	Electrician I.	F
102	Electrician II.	G
103	Electronic Technician I.	F
104	Electronic Technician II.	G
105	Executive Secretary.	G
106	Food Services Supervisor.	G
107	Foreman.	G
108	General Maintenance.	C
109	Glazier.	D
110	Graphic Artist.	D
111	Groundsman.	B
112	Handyman.	B
113	Heating and Air Conditioning Mechanic I.	E
114	Heating and Air Conditioning Mechanic II.	G
115	Heavy Equipment Operator.	E
116	Inventory Supervisor.	D
117	Key Punch Operator.	B
118	Licensed Practical Nurse.	F
119	Locksmith.	G
120	Lubrication Man.	C

121	Machinist.	F
122	Mail Clerk.	D
123	Maintenance Clerk.	C
124	Mason.	G
125	Mechanic.	F
126	Mechanic Assistant.	E
127	Office Equipment Repairman I.	F
128	Office Equipment Repairman II.	G
129	Painter.	E
130	Paraprofessional.	F
131	Payroll Supervisor.	G
132	Plumber I.	E
133	Plumber II.	G
134	Printing Operator.	B
135	Printing Supervisor.	D
136	Programmer.	H
137	Roofing/Sheet Metal Mechanic.	F
138	Sanitation Plant Operator.	G
139	School Bus Supervisor.	E
140	Secretary I.	D
141	Secretary II.	E

142 Secretary III. F

143 Sign Support Specialist E

144 Supervisor of Maintenance. H

145 Supervisor of Transportation. H

146 Switchboard Operator-Receptionist. D

147 Truck Driver. D

148 Warehouse Clerk. C

149 Watchman. B

150 Welder. F

151 WVEIS Data Entry and Administrative Clerk. B

152 (b) An additional \$12 per month is added to the minimum
 153 monthly pay of each service person who holds a high school
 154 diploma or its equivalent.

155 (c) An additional \$11 per month also is added to the
 156 minimum monthly pay of each service person for each of the
 157 following:

158 (1) A service person who holds twelve college hours or
 159 comparable credit obtained in a trade or vocational school as
 160 approved by the state board;

161 (2) A service person who holds twenty-four college hours or
 162 comparable credit obtained in a trade or vocational school as
 163 approved by the state board;

164 (3) A service person who holds thirty-six college hours or
 165 comparable credit obtained in a trade or vocational school as
 166 approved by the state board;

167 (4) A service person who holds forty-eight college hours or
168 comparable credit obtained in a trade or vocational school as
169 approved by the state board;

170 (5) A service employee who holds sixty college hours or
171 comparable credit obtained in a trade or vocational school as
172 approved by the state board;

173 (6) A service person who holds seventy-two college hours or
174 comparable credit obtained in a trade or vocational school as
175 approved by the state board;

176 (7) A service person who holds eighty-four college hours or
177 comparable credit obtained in a trade or vocational school as
178 approved by the state board;

179 (8) A service person who holds ninety-six college hours or
180 comparable credit obtained in a trade or vocational school as
181 approved by the state board;

182 (9) A service person who holds one hundred eight college
183 hours or comparable credit obtained in a trade or vocational
184 school as approved by the state board;

185 (10) A service person who holds one hundred twenty college
186 hours or comparable credit obtained in a trade or vocational
187 school as approved by the state board;

188 (d) An additional \$40 per month also is added to the
189 minimum monthly pay of each service person for each of the
190 following:

191 (1) A service person who holds an associate's degree;

192 (2) A service person who holds a bachelor's degree;

193 (3) A service person who holds a master's degree;

- 194 (4) A service person who holds a doctorate degree.
- 195 (e) An additional \$11 per month is added to the minimum
196 monthly pay of each service person for each of the following:
- 197 (1) A service person who holds a bachelor's degree plus
198 fifteen college hours;
- 199 (2) A service person who holds a master's degree plus
200 fifteen college hours;
- 201 (3) A service person who holds a master's degree plus thirty
202 college hours;
- 203 (4) A service person who holds a master's degree plus
204 forty-five college hours; and
- 205 (5) A service person who holds a master's degree plus sixty
206 college hours.
- 207 (f) To meet the objective of salary equity among the
208 counties, each service person is paid an equity supplement, as set
209 forth in section five of this article, of \$152 per month, subject to
210 the provisions of that section. These payments: (i) Are in
211 addition to any amounts prescribed in the applicable State
212 Minimum Pay Scale Pay Grade, any specific additional amounts
213 prescribed in this section and article and any county supplement
214 in effect in a county pursuant to section five-b of this article; (ii)
215 is paid in equal monthly installments; and (iii) is considered a
216 part of the state minimum salaries for service personnel.
- 217 (g) When any part of a school service person's daily shift of
218 work is performed between the hours of six o'clock p. m. and
219 five o'clock a. m. the following day, the employee is paid no less
220 than an additional \$10 per month and one half of the pay is paid
221 with local funds.

222 (h) Any service person required to work on any legal school
223 holiday is paid at a rate one and one-half times the person's
224 usual hourly rate.

225 (i) Any full-time service personnel required to work in
226 excess of their normal working day during any week which
227 contains a school holiday for which they are paid is paid for the
228 additional hours or fraction of the additional hours at a rate of
229 one and one-half times their usual hourly rate and paid entirely
230 from county board funds.

231 (j) A service person may not have his or her daily work
232 schedule changed during the school year without the employee's
233 written consent and the person's required daily work hours may
234 not be changed to prevent the payment of time and one-half
235 wages or the employment of another employee.

236 (k) The minimum hourly rate of pay for extra duty
237 assignments as defined in section eight-b of this article is no less
238 than one seventh of the person's daily total salary for each hour
239 the person is involved in performing the assignment and paid
240 entirely from local funds: *Provided*, That an alternative
241 minimum hourly rate of pay for performing extra duty
242 assignments within a particular category of employment may be
243 used if the alternate hourly rate of pay is approved both by the
244 county board and by the affirmative vote of a two-thirds majority
245 of the regular full-time persons within that classification
246 category of employment within that county: *Provided, however*,
247 That the vote is by secret ballot if requested by a service person
248 within that classification category within that county. The salary
249 for any fraction of an hour the employee is involved in
250 performing the assignment is prorated accordingly. When
251 performing extra duty assignments, persons who are regularly
252 employed on a one-half day salary basis shall receive the same
253 hourly extra duty assignment pay computed as though the person
254 were employed on a full-day salary basis.

255 (l) The minimum pay for any service personnel engaged in
256 the removal of asbestos material or related duties required for
257 asbestos removal is their regular total daily rate of pay and no
258 less than an additional \$3 per hour or no less than \$5 per hour for
259 service personnel supervising asbestos removal responsibilities
260 for each hour these employees are involved in asbestos-related
261 duties. Related duties required for asbestos removal include, but
262 are not limited to, travel, preparation of the work site, removal
263 of asbestos decontamination of the work site, placing and
264 removal of equipment and removal of structures from the site. If
265 any member of an asbestos crew is engaged in asbestos related
266 duties outside of the employee's regular employment county, the
267 daily rate of pay is no less than the minimum amount as
268 established in the employee's regular employment county for
269 asbestos removal and an additional \$30 per each day the
270 employee is engaged in asbestos removal and related duties. The
271 additional pay for asbestos removal and related duties shall be
272 payable entirely from county funds. Before service personnel
273 may be used in the removal of asbestos material or related
274 duties, they shall have completed a federal Environmental
275 Protection Act approved training program and be licensed. The
276 employer shall provide all necessary protective equipment and
277 maintain all records required by the Environmental Protection
278 Act.

279 (m) For the purpose of qualifying for additional pay as
280 provided in section eight, article five of this chapter, an aide is
281 considered to be exercising the authority of a supervisory aide
282 and control over pupils if the aide is required to supervise,
283 control, direct, monitor, escort or render service to a child or
284 children when not under the direct supervision of a certified
285 professional person within the classroom, library, hallway,
286 lunchroom, gymnasium, school building, school grounds or
287 wherever supervision is required. For purposes of this section,
288 "under the direct supervision of a certified professional person"
289 means that certified professional person is present, with and
290 accompanying the aide.



CHAPTER 173

(Com. Sub. for H. B. 2108 - By Delegate Fleischauer)

[Passed April 10, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 22, 2013.]

AN ACT to amend and reenact §17C-14-15 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-15-49, of said code, all relating to the operation of motor vehicles; making the offense of failure to wear safety belts a primary offense; and prohibiting denial of insurance coverage for prohibited use of electronic communications devices while driving.

Be it enacted by the Legislature of West Virginia:

That §17C-14-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17C-15-49 of said code be amended and reenacted, all to read as follows:

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-15. Prohibited use of an electronic communications device driving without handheld features; definitions; exceptions; penalties.

- 1 (a) Except as provided in subsection (c) of this section, a
- 2 person may not drive or operate a motor vehicle on a public
- 3 street or highway while:

- 4 (1) Texting; or

5 (2) Using a cell phone or other electronic communications
6 device, unless the use is accomplished by hands-free equipment.

7 (b) For purposes of this section, the following terms shall
8 mean:

9 (1) "Cell phone" shall mean a cellular, analog, wireless or
10 digital telephone.

11 (2) "Driving" or "operating a motor vehicle" means
12 operating a motor vehicle, with the motor running, including
13 while temporarily stationary because of traffic, a traffic control
14 device, or other momentary delays, but does not include
15 operating a motor vehicle after the driver has moved the vehicle
16 to the side of, or off, a highway and halted in a location where
17 the vehicle can safely remain stationary.

18 (3) "Electronic communication device" means a cell
19 telephone, personal digital assistant, electronic device with
20 mobile data access, laptop computer, pager, broadband personal
21 communication device, 2-way messaging device, electronic
22 game, or portable computing device. For the purposes of this
23 section, an "electronic communication device" does not include:

24 (A) Voice radios, mobile radios, land mobile radios,
25 commercial mobile radios or two way radios with the capability
26 to transmit and receive voice transmissions utilizing a push-to-
27 talk or press-to-transmit function; or

28 (B) Other voice radios used by a law-enforcement officer, an
29 emergency services provider, an employee or agent of public
30 safety organizations, first responders, Amateur Radio Operators
31 (HAM) licensed by the Federal Communications Commission
32 and school bus operators.

33 (4) "Engaging in a call" means when a person talks into or
34 listens on an electronic communication device, but shall not
35 include when a person dials or enters a phone number on a
36 pushpad or screen to initiate the call.

37 (5) “Hands-free electronic communication device” means an
38 electronic communication device that has an internal feature or
39 function, or that is equipped with an attachment or addition,
40 whether or not permanently part of such electronic
41 communication device, by which a user engages in a call without
42 the use of either hand or both hands.

43 (6) “Hands-free equipment” means the internal feature or
44 function of a hands-free electronic communication device or the
45 attachment or addition to a hands-free electronic communication
46 device by which a user may engage in a call or text without the
47 use of either hand or both hands.

48 (7) “Texting” means manually entering alphanumeric text
49 into, or reading text from, an electronic communication device,
50 and includes, but is not limited to, short message service,
51 e-mailing, instant messaging, a command or request to access a
52 World Wide Web page or engaging in any other form of
53 electronic text retrieval or entry, for present or future
54 communication. For purposes of this section, “texting” does not
55 include the following actions:

56 (A) Reading, selecting or entering a telephone number, an
57 extension number, or voicemail retrieval codes and commands
58 into an electronic device by the pressing the device in order to
59 initiate or receive a phone call or using voice commands to
60 initiate or receive a telephone call;

61 (B) Inputting, selecting or reading information on a global
62 positioning system or navigation system; or

63 (C) Using a device capable of performing multiple functions,
64 including fleet management systems, dispatching devices, smart
65 phones, citizens band radios or music players, for a purpose that
66 is not otherwise prohibited in this section.

67 (8) "Using a cell phone or other electronic communication
68 device" means holding in a person's hand or hands an electronic
69 communication device while:

70 (A) Viewing or transmitting images or data;

71 (B) Playing games;

72 (C) Composing, sending, reading, viewing, accessing,
73 browsing, transmitting, saving or retrieving e-mail, text
74 messages or other electronic data; or

75 (D) Engaging in a call.

76 (c) Subsection (a) of this section shall not apply to:

77 (1) A law-enforcement officer, a firefighter, an emergency
78 medical technician, a paramedic or the operator of an authorized
79 emergency vehicle in the performance of their official duties;

80 (2) A person using an electronic communication device to
81 report to appropriate authorities a fire, a traffic accident, a
82 serious road hazard, or a medical or hazardous materials
83 emergencies.

84 (3) The activation or deactivation of hands-free equipment
85 or a function of hands-free equipment.

86 (d) This section does not supersede the provisions of section
87 three-a, article two, chapter seventeen-b of this code or any more
88 restrictive provisions for drivers of commercial motor vehicles
89 prescribed by the provisions of chapter seventeen-e of this code
90 or federal law or rule.

91 (e) Any person who violates the provisions of subsection (a)
92 of this section is guilty of a traffic offense and, upon conviction
93 thereof, shall for a first offense be fined \$100; for a second

94 offense be fined \$200; and for a third or subsequent offense be
95 fined \$300. No court costs or other fees shall be assessed for a
96 violation of subsection (a) of this section.

97 (f) Notwithstanding any other provision of this code to the
98 contrary, points may not be entered on any driver's record
99 maintained by the Division of Motor Vehicles as a result of a
100 violation of this section, except for the third and subsequent
101 convictions of the offense, for which three points shall be
102 entered on any driver's record maintained by the Division of
103 Motor Vehicles.

104 (g) Driving or operating a motor vehicle on a public street or
105 highway while texting shall be enforced as a primary offense.
106 Driving or operating a motor vehicle on a public street or
107 highway while using a cell phone or other electronic
108 communication device without hands-free equipment shall be
109 enforced as a secondary offense until July 1, 2013, when it shall
110 be enforced as a primary offense for purposes of citation.

111 (h) Within ninety days of the effective date of this section,
112 the Department of Transportation shall cause to be erected signs
113 upon any highway entering the state of West Virginia on which
114 a welcome to West Virginia sign is posted, and any other
115 highway where the Division of Highways deems appropriate,
116 posted at a distance of not more than one mile from each border
117 crossing, each sign to bear an inscription clearly communicating
118 to motorists entering the state that texting, or the use of a
119 wireless communication device without hands-free equipment,
120 is illegal within this state.

121 (i) Nothing contained in this section shall be construed to
122 authorize seizure of a cell phone or electronic device by any law-
123 enforcement agency.

124 (j) No policy providing liability coverage for personal lines
125 insurance shall contain a provision which may be used to deny

126 coverage or exclude payment of any legal damages recoverable
127 by law for injuries proximately caused by a violation of this
128 section, as long as such amounts are within the coverage limits
129 of the insured.

ARTICLE 15. EQUIPMENT.

§ 17C-15-49. Operation of vehicles with safety belts; exception; penalty; civil actions; educational program by West Virginia State Police.

1 (a) A person may not operate a passenger vehicle on a public
2 street or highway of this state unless the person, any passenger
3 in the back seat under eighteen years of age, and any passenger
4 in the front seat of the passenger vehicle is restrained by a safety
5 belt meeting applicable federal motor vehicle safety standards.
6 For the purposes of this section, the term "passenger vehicle"
7 means a motor vehicle which is designed for transporting ten
8 passengers or less, including the driver, except that the term does
9 not include a motorcycle, a trailer, or any motor vehicle which
10 is not required on the date of the enactment of this section under
11 a federal motor vehicle safety standard to be equipped with a belt
12 system. The provisions of this section apply to all passenger
13 vehicles manufactured after January 1, 1967, and being 1968
14 models and newer.

15 (b) The required use of safety belts as provided herein does
16 not apply to a duly appointed or contracted rural mail carrier of
17 the United States Postal Service who is actually making mail
18 deliveries or to a passenger or operator with a physically
19 disabling condition whose physical disability would prevent
20 appropriate restraint in the safety belt if the condition is duly
21 certified by a physician who states the nature of the disability as
22 well as the reason the restraint is inappropriate. The Division of
23 Motor Vehicles shall adopt rules, in accordance with the
24 provisions of chapter twenty-nine-a of this code, to establish a

25 method to certify the physical disability and to require use of an
26 alternative restraint system where feasible or to waive the
27 requirement for the use of any restraint system.

28 (c) Any person who violates the provisions of this section
29 shall be fined \$25. No court costs or other fees may be assessed
30 for a violation of this section.

31 (d) A violation of this section is not admissible as evidence
32 of negligence or contributory negligence or comparative
33 negligence in any civil action or proceeding for damages, and is
34 not admissible in mitigation of damages: *Provided, That the*
35 *court may, upon motion of the defendant, conduct an in camera*
36 *hearing to determine whether an injured party's failure to wear*
37 *a safety belt was a proximate cause of the injuries complained*
38 *of. Upon a finding by the court, the court may then, in a jury*
39 *trial, by special interrogatory to the jury, determine: (1) That the*
40 *injured party failed to wear a safety belt; and (2) that the failure*
41 *to wear the safety belt constituted a failure to mitigate damages.*
42 *The trier of fact may reduce the injured party's recovery for*
43 *medical damages by an amount not to exceed five percent*
44 *thereof. In the event the plaintiff stipulates to the reduction of*
45 *five percent of medical damages, the court shall make the*
46 *calculations and the issue of mitigation of damages for failure to*
47 *wear a safety belt may not be presented to the jury. In all cases,*
48 *the actual computation of the dollar amount reduction shall be*
49 *determined by the court.*

50 (e) Notwithstanding any other provision of this code to the
51 contrary, no points may be entered on any driver's record
52 maintained by the Division of Motor Vehicles as a result of a
53 violation of this section.

54 (f) The Governor's Highway Safety Program, in cooperation
55 with the West Virginia State Police and any other state
56 departments or agencies and with county and municipal
57 law-enforcement agencies, shall initiate and conduct an

58 educational program designed to encourage compliance with
59 safety belt usage laws. This program shall be focused on the
60 effectiveness of safety belts, the monetary savings and the other
61 benefits to the public from usage of safety belts and the
62 requirements and penalties specified in this law.

63 (g) Nothing contained in this section abrogates or alters the
64 provisions of section forty-six of this article relating to the
65 mandatory use of child passenger safety devices.

CHAPTER 174

**(H. B. 2542 - By Delegates Morgan, Stephens, Jones,
Paxton, P. Smith, Staggers, Hartman and Lynch)**

[Passed April 12, 2013; in effect from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §29A-2-7 of the Code of West Virginia, 1931, as amended, relating to publications of the Secretary of State; requiring the State Register, Code of State Rules and other documents of the Secretary of State be available only in electronic format; exceptions; rule-making authority; and providing that the fees collected for the sale of certain records will be deposited in equal amounts into the General Revenue Fund and the service fees and collections account.

Be it enacted by the Legislature of West Virginia:

That §29A-2-7 of the Code of West Virginia, 1931, as amended be amended and reenacted to read as follows:

ARTICLE 2. STATE REGISTER.**§29A-2-7. Publication of State Register.**

1 (a) The Legislature intends that the Secretary of State offer
2 to the public access to the State Register and Code of State
3 Rules. The State Register, the Code of State Rules and other
4 documents produced by the Secretary of State's office shall be
5 available in electronic format on the Secretary of State's website.

6 (b) All materials filed in the State Register shall be indexed
7 as quickly as possible in chronological order of filing with a
8 brief description of the item filed and a columnar cross index to:

9 (1) Agency;

10 (2) Code citation to which it relates and by which it is filed
11 in the State Register; and

12 (3) Other information in the description or cross index as the
13 Secretary of State believes will aid a person in using the index.

14 (c) The Secretary of State shall post on the website with each
15 update of the Code of State Rules, a copy of the rule monitor and
16 its cross index which shows the rules that have become effective,
17 and a table showing rules which are out for public comment, and
18 agency-approved, modified and emergency rules.

19 (d) The Secretary of State may propose rules for legislative
20 approval, in accordance with the provisions of article three of
21 this chapter, to change the procedures outlined in this section.

22 (e) One half of all the fees and amounts collected for the sale
23 of the State Register, the Code of State Rules and other copies or
24 data provided by the Secretary of State shall be deposited in the
25 State General Revenue Fund and one half of the fees in the
26 service fees and collections account established in accordance

27 with subsection (f), section two, article one, chapter fifty-nine of
28 this code for the operations of the office of the Secretary of
29 State. The Secretary of State shall dedicate sufficient resources
30 from that fund or other funds to provide the services required in
31 this article.

32 (f) A person who is unable to access electronic versions of
33 documents may review the documents at the office of the
34 Secretary of State, or may request a printed copy at a cost which
35 is sufficient, in the judgment of the Secretary of State, to defray
36 the expenses of publication, including labor, paper and postage:
37 *Provided*, That the Secretary of State may waive the fee.

CHAPTER 175

**(Com. Sub. for H. B. 2553 - By Delegates Morgan,
Stephens, Diserio, Jones, Paxton, M. Smith,
Staggers, Hartman and Lynch)**

[Passed April 10, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 22, 2013.]

AN ACT to amend and reenact §31B-8-809 of the Code of West Virginia, 1931, as amended; to amend and reenact §31B-10-1006 of said code; to amend and reenact §31D-14-1420 of said code; to amend and reenact §31D-15-1530 of said code; to amend and reenact §31E-13-1320 of said code; to amend and reenact §31E-14-1430 of said code; and to amend and reenact §59-1-2a of said code, all relating to the authority to conduct business in the state; authorizing the Secretary of State to administratively dissolve or revoke the certificate of authority of certain business entities; authorizing dissolution or revocation if certain business

entities fail to pay fees imposed by law; requiring notice to a business entity by certified mail before dissolution or revocation due to failure to pay fees; permitting a bad check fee if certain payment by check or money order is rejected for certain reasons; authorizing dissolution or revocation if one or more professional licenses have been revoked and the license is or licenses are necessary for the continued operation of the business entity; and authorizing dissolution or revocation if the business entity is in default with the Bureau of Employment Programs.

Be it enacted by the Legislature of West Virginia:

That §31B-8-809 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31B-10-1006 of said code be amended and reenacted; that §31D-14-1420 of said code be amended and reenacted; that §31D-15-1530 of said code be amended and reenacted; that §31E-13-1320 of said code be amended and reenacted; that §31E-14-1430 of said code be amended and reenacted; and that §59-1-2a of said code be amended and reenacted, all to read as follows:

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 8. WINDING UP COMPANY'S BUSINESS.

§31B-8-809. Grounds for administrative dissolution.

1 The Secretary of State may commence a proceeding to
2 administratively dissolve a limited liability company if:

3 (1) The company fails to pay any fees, taxes or penalties
4 imposed by this chapter or other law within sixty days after they
5 are due;

6 (2) The company fails to deliver its annual report to the
7 Secretary of State within sixty days after it is due;

8 (3) The professional license of one or more of the license
9 holders is revoked by a professional licensing board and the
10 license is or all the licenses are required for the continued
11 operation of the company; or

12 (4) The company is in default with the Bureau of
13 Employment Programs as provided in section six, article two,
14 chapter twenty-one-a of this code.

ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.

§31B-10-1006. Revocation and reinstatement of certificate of authority.

1 (a) A certificate of authority of a foreign limited liability
2 company to transact business in this state may be revoked by the
3 Secretary of State in the manner provided in subsection (b) of
4 this section if:

5 (1) The company fails to:

6 (i) Pay any fees, taxes and penalties owed to this state;

7 (ii) Deliver its annual report required under section 2-211 to
8 the Secretary of State within sixty days after it is due; or

9 (iii) File a statement of a change in the name or business
10 address of the agent as required by this article;

11 (2) A misrepresentation has been made of any material
12 matter in any application, report, affidavit or other record
13 submitted by the company pursuant to this article;

14 (3) The professional license of one or more of the license
15 holders is revoked by a professional licensing board and the
16 license is or all the licenses are required for the continued
17 operation of the company; or

18 (4) The company is in default with the Bureau of
19 Employment Programs as provided in section six, article two,
20 chapter twenty-one-a of this code.

21 (b) The Secretary of State may not revoke a certificate of
22 authority of a foreign limited liability company unless the
23 Secretary of State sends the company notice of the revocation,
24 at least sixty days before its effective date, by a record addressed
25 to its principal office. The notice must specify the cause for the
26 revocation of the certificate of authority. The authority of the
27 company to transact business in this state ceases on the effective
28 date of the revocation unless the foreign limited liability
29 company cures the failure before that date.

30 (c) A foreign limited liability company administratively
31 revoked may apply to the Secretary of State for reinstatement
32 within two years after the effective date of revocation. The
33 application must:

34 (1) Recite the name of the company and the effective date of
35 its administrative revocation; (2) state that the ground for
36 revocation either did not exist or has been eliminated; (3) state
37 that the company's name satisfies the requirements of section
38 10-1005; and (4) contain a certificate from the Tax
39 Commissioner reciting that all taxes owed by the company have
40 been paid.

41 (d) If the Secretary of State determines that the application
42 contains the information required by subsection (a) of this
43 section and that the information is correct, the Secretary of State
44 shall cancel the certificate of revocation and prepare a certificate
45 of reinstatement that recites this determination and the effective
46 date of reinstatement, file the original of the certificate and serve
47 the company with a copy of the certificate.

48 (e) When reinstatement is effective, it relates back to and
49 takes effect as of the effective date of the administrative

50 revocation and the company may resume its business as if the
51 administrative revocation had never occurred.

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 14. DISSOLUTION.

PART II. ADMINISTRATIVE DISSOLUTION.

§31D-14-1420. Grounds for administrative dissolution.

1 The Secretary of State may commence a proceeding under
2 section one thousand four hundred twenty-one of this article to
3 administratively dissolve a corporation if:

4 (1) The corporation does not pay within sixty days after they
5 are due any fees, franchise taxes or penalties imposed by this
6 chapter or other law;

7 (2) The corporation does not notify the Secretary of State
8 within sixty days that its registered agent or registered office has
9 been changed, that its registered agent has resigned or that its
10 registered office has been discontinued;

11 (3) The corporation's period of duration stated in its articles
12 of incorporation expires;

13 (4) The professional license of one or more of the license
14 holders is revoked by a professional licensing board and the
15 license is or all the licenses are required for the continued
16 operation of the corporation; or

17 (5) The corporation is in default with the Bureau of
18 Employment Programs as provided in section six, article two,
19 chapter twenty-one-a of this code.

ARTICLE 15. FOREIGN CORPORATIONS.**PART III. REVOCATION OF CERTIFICATE OF AUTHORITY.****§31D-15-1530. Grounds for revocation.**

1 The Secretary of State may commence a proceeding under
2 section one thousand five hundred thirty-one of this article to
3 revoke the certificate of authority of a foreign corporation
4 authorized to transact business in this state if:

5 (1) The foreign corporation does not pay within sixty days
6 after they are due any fees, franchise taxes or penalties imposed
7 by this chapter or other law;

8 (2) The foreign corporation does not inform the Secretary of
9 State under section one thousand five hundred eight or one
10 thousand five hundred nine of this article that its registered agent
11 or registered office has changed, that its registered agent has
12 resigned or that its registered office has been discontinued within
13 sixty days of the change, resignation or discontinuance;

14 (3) An incorporator, director, officer or agent of the foreign
15 corporation signed a document he or she knew was false in any
16 material respect with intent that the document be delivered to the
17 Secretary of State for filing;

18 (4) The Secretary of State receives a duly authenticated
19 certificate from the Secretary of State or other official having
20 custody of corporate records in the state or country under whose
21 law the foreign corporation is incorporated stating that it has
22 been dissolved or disappeared as the result of a merger;

23 (5) The professional license of one or more of the license
24 holders is revoked by a professional licensing board and the
25 license is or all the licenses are required for the continued
26 operation of the foreign corporation; or

27 (6) The foreign corporation is in default with the Bureau of
28 Employment Programs as provided in section six, article two,
29 chapter twenty-one-a of this code.

**CHAPTER 31E. WEST VIRGINIA
NONPROFIT CORPORATION ACT.**

ARTICLE 13. DISSOLUTION.

PART II. ADMINISTRATIVE DISSOLUTION.

§31E-13-1320. Grounds for administrative dissolution.

1 The Secretary of State may commence a proceeding under
2 section one thousand three hundred twenty-one of this article to
3 administratively dissolve a corporation if:

4 (1) The corporation does not pay within sixty days after they
5 are due any fees, franchise taxes or penalties imposed by this
6 chapter or other law;

7 (2) The corporation does not notify the Secretary of State
8 within sixty days that its registered agent or registered office has
9 been changed, that its registered agent has resigned or that its
10 registered office has been discontinued;

11 (3) The corporation's period of duration stated in its articles
12 of incorporation expires;

13 (4) The professional license of one or more of the license
14 holders is revoked by a professional licensing board and the
15 license is or all the licenses are required for the continued
16 operation of the nonprofit entity; or

17 (5) The corporation is in default with the Bureau of
18 Employment Programs as provided in section six, article two,
19 chapter twenty-one-a of this code.

ARTICLE 14. FOREIGN CORPORATIONS.**PART III. REVOCATION OF CERTIFICATE OF AUTHORITY.****§31E-14-1430. Grounds for revocation.**

1 The Secretary of State may commence a proceeding under
2 section one thousand four hundred thirty-one of this article to
3 revoke the certificate of authority of a foreign corporation
4 authorized to conduct activities in this state if:

5 (1) The foreign corporation does not pay within sixty days
6 after they are due any fees, franchise taxes or penalties imposed
7 by this chapter or other law;

8 (2) The foreign corporation does not inform the Secretary of
9 State under sections one thousand four hundred eight or one
10 thousand four hundred nine of this article that its registered agent
11 or registered office has changed, that its registered agent has
12 resigned, or that its registered office has been discontinued
13 within sixty days of the change, resignation or discontinuance;

14 (3) A nincorporator, director, officer or agent of the foreign
15 corporation signed a document he or she knew was false in any
16 material respect with intent that the document be delivered to the
17 Secretary of State for filing;

18 (4) The Secretary of State receives a duly authenticated
19 certificate from the Secretary of State or other official having
20 custody of corporate records in the state or country under whose
21 law the foreign corporation is incorporated stating that it has
22 been dissolved or disappeared as the result of a merger;

23 (5) The professional license of one or more of the license
24 holders is revoked by a professional licensing board and the
25 license is or all the licenses are required for the continued
26 operation of the corporation; or

27 (6) The foreign corporation is in default with the Bureau of
28 Employment Programs as provided in section six, article two,
29 chapter twenty-one-a of this code.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

**§59-1-2a. Annual business fees to be paid to the Secretary of State;
filing of annual reports; purchase of data.**

1 (a) *Definitions.* — As used in this section:

2 (1) “Annual report fee” means the fee described in
3 subsection (c) of this section that is to be paid to the Secretary of
4 State each year by corporations, limited partnerships, domestic
5 limited liability companies and foreign limited liability
6 companies. After June 30, 2008, any reference in this code to a
7 fee paid to the Secretary of State for services as a statutory
8 attorney in fact shall mean the annual report fee described in this
9 section.

10 (2) “Business activity” means all activities engaged in or
11 caused to be engaged in with the object of gain or economic
12 benefit, direct or indirect, but does not mean any of the activities
13 of foreign corporations enumerated in subsection (b), section one
14 thousand five hundred one, article fifteen, chapter thirty-one-d
15 of this code, except for the activity of conducting affairs in
16 interstate commerce when activity occurs in this state, nor does
17 it mean any of the activities of foreign limited liability
18 companies enumerated in subsection (a), section one thousand
19 three, article ten, chapter thirty-one-b of this code except for the
20 activity of conducting affairs in interstate commerce when
21 activity occurs in this state.

22 (3) “Corporation” means a “domestic corporation”, a
23 “foreign corporation” or a “nonprofit corporation”.

24 (4) "Deliver or delivery" means any method of delivery used
25 in conventional commercial practice, including, but not limited
26 to, delivery by hand, mail, commercial delivery and electronic
27 transmission.

28 (5) "Domestic corporation" means a corporation for profit
29 which is not a foreign corporation incorporated under or subject
30 to chapter thirty-one-d of this code.

31 (6) "Domestic limited liability company" means a limited
32 liability company which is not a foreign limited liability
33 company under or subject to chapter thirty-one-b of this code.

34 (7) "Foreign corporation" means a for-profit corporation
35 incorporated under a law other than the laws of this state.

36 (8) "Foreign limited liability company" means a limited
37 liability company organized under a law other than the laws of
38 this state.

39 (9) "Limited partnership" means a partnership as defined by
40 section one, article nine, chapter forty-seven of this code.

41 (10) "Nonprofit corporation" means a nonprofit corporation
42 as defined by section one hundred fifty, article one, chapter
43 thirty-one-e of this code.

44 (11) "Registration fee" means the fee for the issuance of a
45 certificate relating to the initial registration of a corporation,
46 limited partnership, domestic limited liability company or
47 foreign limited liability company described in subdivision (2),
48 subsection (a), section two of this article. The term "initial
49 registration" also means the date upon which the registration fee
50 is paid.

51 (b) *Required payment of annual report fee and filing of*
52 *annual report.* — After June 30, 2008, no corporation, limited

53 partnership, domestic limited liability company or foreign
54 limited liability company may engage in any business activity in
55 this state without paying the annual report fee and filing the
56 annual report as required by this section.

57 (c) *Annual report fee.* — After June 30, 2008, each
58 corporation, limited partnership, domestic limited liability
59 company and foreign limited liability company engaged in or
60 authorized to do business in this state shall pay an annual report
61 fee of \$25 for the services of the Secretary of State as attorney-
62 in-fact for the corporation, limited partnership, domestic limited
63 liability company or foreign limited liability company, and for
64 such other administrative services as may be imposed by law
65 upon the Secretary of State. The fee is due and payable each year
66 after the initial registration of the corporation, limited
67 partnership, domestic limited liability company or foreign
68 limited liability company with the annual report described in
69 subsection (d) of this section on or before the dates specified in
70 subsection (e) of this section. The fee is due and payable each
71 year with the annual report from corporations, limited
72 partnerships, domestic limited liability companies and foreign
73 limited liability companies that paid the registration fee prior to
74 July 1, 2008, on or before the dates specified in subsection (e) of
75 this section. The annual report fees received by the Secretary of
76 State pursuant to this subsection shall be deposited by the
77 Secretary of State in the general administrative fees account
78 established by section two of this article.

79 (d) *Annual report.* — (1) After June 30, 2008, each
80 corporation, limited partnership, domestic limited liability
81 company and foreign limited liability company engaged in or
82 authorized to do business in this state shall file an annual report.
83 The report is due each year after the initial registration of the
84 corporation, limited partnership, domestic limited liability
85 company or foreign limited liability company with the annual
86 report fee described in subsection (c) of this section on or before

87 the dates specified in subsection (e) of this section. The report is
88 due each year from corporations, limited partnerships, domestic
89 limited liability companies and foreign limited liability
90 companies that paid the registration fee prior to July 1, 2008, on
91 or before the dates specified in subsection (e) of this section.

92 (2) (A) The annual report shall be filed with the Secretary of
93 State on forms provided by the Secretary of State for that
94 purpose. The annual report shall, in the case of corporations,
95 contain: (i) The address of the corporation's principal office; (ii)
96 the names and mailing addresses of its officers and directors;
97 (iii) the name and mailing address of the person on whom notice
98 of process may be served; (iv) the name and address of the
99 corporation's parent corporation and of each subsidiary of the
100 corporation licensed to do business in this state; (v) in the case
101 of limited partnerships domestic limited liability companies and
102 foreign limited liability companies, similar information with
103 respect to their principal or controlling interests as determined
104 by the Secretary of State or otherwise required by law to be
105 reported to the Secretary of State; (vi) the county or county code
106 in which the principal office address or mailing address of the
107 company is located; (vii) business class code; and (viii) any
108 other information the Secretary of State considers appropriate.

109 (B) Notwithstanding any other provision of law to the
110 contrary, the Secretary of State shall, upon request of any person,
111 disclose, with respect to corporations: (i) The address of the
112 corporation's principal office; (ii) the names and addresses of its
113 officers and directors; (iii) the name and mailing address of the
114 person on whom notice of process may be served; (iv) the name
115 and address of each subsidiary of the corporation and the
116 corporation's parent corporation; (v) the county or county code
117 in which the principal office address or mailing address of the
118 company is located; and (vi) the business class code. The
119 Secretary of State shall provide similar information with respect
120 to information in its possession relating to limited partnerships

121 domestic limited liability companies and foreign limited liability
122 companies, similar information with respect to their principal or
123 controlling interests.

124 (e) *Annual reports and fees due July 1.* — Each domestic
125 and foreign corporation, limited partnership, limited liability
126 company and foreign limited liability company shall file with the
127 Secretary of State the annual report and pay the annual report fee
128 by July 1 of each year.

129 (f) *Deposit of fees.* — The annual report fees received by the
130 Secretary of State pursuant to this section shall be deposited by
131 the Secretary of State in the general administrative fees account
132 established by section two, article one, chapter fifty-nine of this
133 code.

134 (g) (1) *Duty to pay.* — It shall be the duty of each
135 corporation, limited partnership, limited liability company and
136 foreign limited liability company required to pay the annual
137 report fees imposed under this article, to remit them with a
138 properly completed annual report to the Secretary of State, and
139 if it fails to do so it shall be subject to the late fees prescribed in
140 subsection (h) of this article and dissolution or revocation,
141 pursuant to this code: *Provided*, That before dissolution or
142 revocation for failure to pay fees may occur, the Secretary of
143 State shall notify the entity by certified mail, return receipt
144 requested, of its failure to pay, all late fees or bad check fees
145 associated with the failure to pay and the date upon which
146 dissolution or revocation will occur if all fees are not paid in full.
147 The certified mail required by this subdivision shall be
148 postmarked at least thirty days before the dissolution or
149 revocation date listed in the notice.

150 (2) *Bad check fee.* — If any corporation, limited partnership,
151 limited liability company or foreign limited liability company
152 submits payment by check or money order for the annual report

153 fee imposed under this article and the check or money order is
154 rejected because there are insufficient funds in the account or the
155 account is closed, the Secretary of State shall assess a bad check
156 fee to the corporation, limited partnership, limited liability
157 company or foreign limited liability company that is equivalent
158 to the service charge paid by the Secretary of State due to the
159 rejected check or money order. The bad check fee assessed under
160 this subdivision shall be deposited into the account or accounts
161 from which the Secretary of State paid the service charge.

162 (h) *Late fees.* — (1) The following late fees shall be in
163 addition to any other penalties and remedies available elsewhere
164 in this code:

165 (A) *Administrative late fee.* — The Secretary of State shall
166 assess upon each corporation, limited partnership, limited
167 liability company and foreign limited liability company
168 delinquent in the payment of an annual report fee or the filing of
169 an annual report an administrative late fee in the amount of \$50.

170 (B) *Administrative late fees for nonprofit corporations.* —
171 The Secretary of State shall assess each nonprofit corporation
172 delinquent in the payment of an annual report fee or the filing of
173 an annual report an administrative late fee in the amount of \$25.

174 (2) The Secretary of State shall deposit the first \$25,000 of
175 fees collected under this subsection into the general
176 administrative fees account established in subsection (h), section
177 two of this article, and shall deposit any additional fees collected
178 under this section into the General Revenue Fund of the state.

179 (i) *Reports to Tax Commissioner; suspension, cancellation*
180 *or withholding of business registration certificate.* —

181 (1) The Secretary of State shall, within twenty days after the
182 close of each month, make a report to the Tax Commissioner for
183 the preceding month, in which he or she shall set out the name

184 of every business entity to which he or she issued a certificate to
185 conduct business in the State of West Virginia during that
186 month. The report shall set out the names and addresses all
187 corporations, limited partnerships, limited liability companies
188 and foreign limited liability companies to which he or she issued
189 certificates of change of name or of change of location of
190 principal office, dissolution, withdrawal or merger. If the
191 Secretary of State fails to make the report, it shall be the duty of
192 the Tax Commissioner to report such failure to the Governor. A
193 writ of mandamus shall lie for correction of such failure.

194 (2) Notwithstanding any other provisions of this code to the
195 contrary, upon receipt of notice from the Secretary of State that
196 a corporation, limited partnership, limited liability company and
197 foreign limited liability company is more than thirty days
198 delinquent in the payment of annual report fees or in the filing of
199 an annual report required by this section, the Tax Commissioner
200 may suspend, cancel or withhold a business registration
201 certificate issued to or applied for by the delinquent corporation,
202 limited partnership, limited liability company or foreign limited
203 liability company until the same is paid and filed in the manner
204 provided for the suspension, cancellation or withholding of
205 business registration certificates for other reasons under article
206 twelve, chapter eleven of this code.

207 (j) *Purchase of data.* — The Secretary of State will provide
208 electronically, for purchase, any data maintained in the Secretary
209 of State's Business Organizations Database. For the electronic
210 purchase of the entire Business Organizations Database, the cost
211 is \$12,000. For the purchase of the monthly updates of the
212 Business Organizations Database, the cost is \$1,000 per month.
213 The fees received by the Secretary of State pursuant to this
214 subsection shall be deposited by the Secretary of State in the
215 general administrative fees account established by section two,
216 article one, chapter fifty-nine of this code.

217 (k) The Secretary of State is authorized to collect the service
218 fee per transaction, if any, charged for an online service from
219 any customer who purchases data or conducts transactions
220 through an online service.

221 (l) *Rules.* — The Secretary of State may propose legislative
222 rules for promulgation pursuant to article three, chapter twenty-
223 nine-a of this code to implement this article, and may, pending
224 promulgation of those rules, promulgate emergency rules
225 pursuant to those provisions for those purposes.

CHAPTER 176

**(Com. Sub. for H. B. 2554 - By Delegates Morgan, Stephens,
Staggers, Hartman, Jones, Diserio and Lynch)**

[Passed April 12, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §31D-15-1532 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §31D-15-1533; to amend and reenact §31E-14-1432 of said code; to amend said code by adding thereto a new section, designated §31E-14-1533; and to amend and reenact §59-1-2 of said code, all relating to providing a procedure for the Secretary of State to reinstate certificates of authority for foreign corporations after an administrative revocation; providing for contents of application; providing for effective date of reinstatement; providing for appeal from denial of reinstatement; providing that reinstatement fee is the same for foreign and domestic limited liability companies and foreign and domestic corporations; and establishing a fee for additional parties to a merger when filing articles of merger.

Be it enacted by the Legislature of West Virginia:

That §31D-15-1532 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §31D-15-1533; that §31E-14-1432 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §31E-14-1533; and that §59-1-2 of said code be amended and reenacted, all to read as follows:

**CHAPTER 31D. WEST VIRGINIA
BUSINESS CORPORATION ACT.**

ARTICLE 15. FOREIGN CORPORATIONS.

§31D-15-1532. Reinstatement following administrative revocation.

1 (a) A corporation that has had its certificate of authority
2 administratively revoked under section one thousand five
3 hundred thirty-one of this article may apply to the Secretary of
4 State for reinstatement within two years after the effective date
5 of revocation. The application must:

6 (1) Recite the name of the corporation and the effective date
7 of the administrative revocation;

8 (2) Demonstrate that the ground or grounds for revocation
9 have been eliminated;

10 (3) Demonstrate that the corporation's name satisfies the
11 requirements of section one thousand five hundred six, article
12 fifteen of this chapter; and

13 (4) Obtain a certificate from the Tax Commissioner reciting
14 that all taxes owed by the corporation have been paid.

15 (b) If the Secretary of State determines that the application
16 contains the information required by subsection (a) of this
17 section and that the information is accurate, the Secretary of

18 State shall cancel the Certificate of Revocation and prepare a
19 Certificate of Reinstatement that recites the Secretary of State's
20 determination and the effective date of reinstatement. The
21 Secretary of State shall send notice of the reinstatement to the
22 corporation within thirty days of the determination.

23 (c) When a reinstatement is granted, the reinstatement relates
24 back to and takes effect as of the effective date of the
25 administrative revocation and the corporation resumes its
26 business as if the administrative revocation had never occurred.

§31D-15-1533. Appeal from denial of reinstatement.

2 (a) If the Secretary of State denies a corporation's
3 application for reinstatement following administrative
4 revocation, the Secretary of State shall notify the corporation
5 within thirty days of application by written notice that explains
6 the reason or reasons for denial.

7 (b) The corporation may appeal the denial of reinstatement
8 to the circuit court of Kanawha County within thirty days after
9 service of the notice of denial.

10 (c) The corporation may appeal by petitioning the circuit
11 court of Kanawha County to set aside the revocation and
12 attaching to the petition copies of the Secretary of State's
13 Certificate of Revocation, the corporation's application for
14 reinstatement and the Secretary of State's notice of denial.

15 (d) The circuit court's final decision may be appealed to the
16 West Virginia Supreme Court of Appeals in accordance with
17 article six, chapter twenty-nine-a of this code.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 14. FOREIGN CORPORATIONS.

§31E-14-1432. Reinstatement following administrative revocation.

1 (a) A corporation that has had its certificate of authority
2 administratively revoked under section one thousand four
3 hundred thirty-one of this article may apply to the Secretary of
4 State for reinstatement within two years after the effective date
5 of revocation. The application must:

6 (1) Recite the name of the corporation and the effective date
7 of the administrative revocation;

8 (2) Demonstrate that the ground or grounds for revocation
9 have been eliminated;

10 (3) Demonstrate that the corporation's name satisfies the
11 requirements of section one thousand four hundred six, article
12 fifteen of this chapter; and

13 (4) Obtain a certificate from the Tax Commissioner reciting
14 that all taxes owed by the corporation have been paid.

15 (b) If the Secretary of State determines that the application
16 contains the information required by subsection (a) of this
17 section and that the information is accurate, the Secretary of
18 State shall cancel the Certificate of Revocation and prepare a
19 Certificate of Reinstatement that recites the Secretary of State's
20 determination and the effective date of reinstatement. The
21 Secretary of State shall send notice of the reinstatement to the
22 corporation within thirty days of the determination.

23 (c) When a reinstatement is granted, the reinstatement relates
24 back to and takes effect as of the effective date of the
25 administrative revocation and the corporation resumes its
26 business as if the administrative revocation had never occurred.

§31E-14-1533. Appeal from denial of reinstatement.

1 (a) If the Secretary of State denies a corporation's
2 application for reinstatement following administrative

3 revocation, the Secretary of State shall notify the corporation
4 within thirty days of application by written notice that explains
5 the reason or reasons for denial.

6 (b) The corporation may appeal the denial of reinstatement
7 to the circuit court of Kanawha County within thirty days after
8 service of the notice of denial.

9 (c) The corporation may appeal by petitioning the circuit
10 court of Kanawha County to set aside the revocation and
11 attaching to the petition copies of the Secretary of State's
12 Certificate of Revocation, the corporation's application for
13 reinstatement and the Secretary of State's notice of denial.

14 (d) The circuit court's final decision may be appealed to the
15 West Virginia Supreme Court of Appeals in accordance with
16 article six, chapter twenty-nine-a of this code.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by Secretary of State.

1 (a) Except as may be otherwise provided in this code, the
2 Secretary of State shall charge for services rendered in his or her
3 office the following fees to be paid by the person to whom the
4 service is rendered at the time it is done:

5 (1) For filing, recording, indexing, preserving a record of
6 and issuing a certificate relating to the formation, amendment,
7 change of name, registration of trade name, merger,
8 consolidation, conversion, renewal, dissolution, termination,
9 cancellation, withdrawal revocation and reinstatement of
10 business entities organized within the state, a s follows:

- 11 (A) Articles of incorporation of for-profit corporation, \$50;
- 12 (B) Articles of incorporation of nonprofit corporation, \$25;
- 13 (C) Articles of organization of limited liability company,
14 \$100;
- 15 (D) Agreement of a general partnership, \$50;
- 16 (E) Certificate of a limited partnership, \$100;
- 17 (F) Agreement of a voluntary association, \$50;
- 18 (G) Articles of organization of a business trust, \$50;
- 19 (H) Amendment or correction of articles of incorporation,
20 including change of name or increase of capital stock, in addition
21 to any applicable license tax, \$25;
- 22 (I) Amendment or correction, including change of name, of
23 articles of organization of business trust, limited liability
24 partnership, limited liability company or professional limited
25 liability company or of certificate of limited partnership or
26 agreement of voluntary association, \$25;
- 27 (J) Amendment and restatement of articles of incorporation,
28 certificate of limited partnership, agreement of voluntary
29 association or articles of organization of limited liability
30 partnership, limited liability company or professional limited
31 liability company or business trust, \$25;
- 32 (K) Registration of trade name, otherwise designated as a
33 true name, fictitious name or D.B.A. (doing business as) name
34 for any domestic business entity as permitted by law, \$25;
- 35 (L) Articles of merger of two corporations, limited
36 partnerships, limited liability partnerships, limited liability
37 companies or professional limited liability companies, voluntary

38 associations or business trusts, \$25, and for each additional party
39 to the merger in excess of two, \$5;

40 (M) Statement of conversion, when permitted, from one
41 business entity into another business entity, in addition to the
42 cost of filing the appropriate documents to organize the
43 surviving entity, \$25;

44 (N) Articles of dissolution of a corporation, voluntary
45 association or business trust or statement of dissolution of a
46 general partnership, \$25;

47 (O) Revocation of voluntary dissolution of a corporation,
48 voluntary association or business trust, \$15;

49 (P) Articles of termination of a limited liability company,
50 cancellation of a limited partnership or statement of withdrawal
51 of limited liability partnership, \$25; and

52 (Q) Reinstatement of a domestic or foreign limited liability
53 company, a professional limited liability company or a domestic
54 or foreign corporation after administrative dissolution or
55 revocation, \$25.

56 (2) For filing, recording, indexing, preserving a record of
57 and issuing a certificate relating to the registration, amendment,
58 change of name, merger, consolidation, conversion, renewal,
59 withdrawal or termination within this state of business entities
60 organized in other states or countries, as follows:

61 (A) Certificate of authority of for-profit corporation,
62 \$100.00;

63 (B) Certificate of authority of nonprofit corporation, \$50.00;

64 (C) Certificate of authority of foreign limited liability
65 companies, \$150;

- 66 (D) Certificate of exemption from certificate of authority,
67 \$25;
- 68 (E) Registration of a general partnership, \$50;
- 69 (F) Registration of a limited partnership, \$150;
- 70 (G) Registration of a limited liability partnership for two-
71 year term, \$500;
- 72 (H) Registration of a voluntary association, \$50;
- 73 (I) Registration of a trust or business trust, \$50;
- 74 (J) Amendment or correction of certificate of authority of a
75 foreign corporation, including change of name or increase of
76 capital stock, in addition to any applicable license tax, \$25;
- 77 (K) Amendment or correction of certificate of limited
78 partnership, limited liability partnership, limited liability
79 company or professional limited liability company, voluntary
80 association or business trust, \$25;
- 81 (L) Registration of trade name, otherwise designated as a
82 true name, fictitious name or D.B.A. (doing business as) name
83 for any foreign business entity as permitted by law, \$25;
- 84 (M) Amendment and restatement of certificate of authority
85 or of registration of a corporation, limited partnership, limited
86 liability partnership, limited liability company or professional
87 limited liability company, voluntary association or business
88 trust, \$25;
- 89 (N) Articles of merger of two corporations, limited
90 partnerships, limited liability partnerships, limited liability
91 companies or professional limited liability companies, voluntary
92 associations or business trusts, \$25, and for each addition party
93 to the merger in excess of two, \$5;

94 (O) Statement of conversion, when permitted, from one
95 business entity into another business entity, in addition to the
96 cost of filing the appropriate articles or certificate to organize the
97 surviving entity, \$25; and

98 (P) Certificate of withdrawal or cancellation of a
99 corporation, limited partnership, limited liability partnership,
100 limited liability company, voluntary association or business
101 trust, \$25.

102 Notwithstanding any other provision of this section to the
103 contrary, after June 13, 2008, the fees described in this
104 subdivision that are collected for the issuance of a certificate
105 relating to the initial registration of a corporation, limited
106 partnership, domestic limited liability company or foreign
107 limited liability company shall be deposited in the general
108 administrative fees account established by this section.

109 (3) For receiving, filing and recording a change of the
110 principal or designated office, change of the agent of process
111 and/or change of officers, directors, partners, members or
112 managers, as the case may be, of a corporation, limited
113 partnership, limited liability partnership, limited liability
114 company or other business entity as provided by law, \$15.

115 (4) For receiving, filing and preserving a reservation of a
116 name for each one hundred twenty days or for any other period
117 in excess of seven days prescribed by law for a corporation,
118 limited partnership, limited liability partnership or limited
119 liability company, \$15.

120 (5) For issuing a certificate relating to a corporation or other
121 business entity, as follows:

122 (A) Certificate of good standing of a domestic or foreign
123 corporation, \$10;

124 (B) Certificate of existence of a domestic limited liability
125 company, and certificate of authorization foreign limited liability
126 company, \$10;

127 (C) Certificate of existence of any business entity, trademark
128 or service mark registered with the Secretary of State, \$10;

129 (D) Certified copy of corporate charter or comparable
130 organizing documents for other business entities, \$15;

131 (E) Plus, for each additional amendment, restatement or
132 other additional document, \$5;

133 (F) Certificate of registration of the name of a foreign
134 corporation, limited liability company, limited partnership or
135 limited liability partnership, \$25;

136 (G) For the annual renewal of the name registration, \$10;
137 and

138 (H) Any other certificate not specified in this subdivision,
139 \$10.

140 (6) For issuing a certificate other than those relating to
141 business entities, as provided in this subsection, as follows:

142 (A) Certificate or apostille relating to the authority of certain
143 public officers, including the membership of boards and
144 commissions, \$10;

145 (B) For each additional certificate pertaining to the same
146 transaction, \$5;

147 (C) Any other certificate not specified in this subdivision,
148 \$10;

149 (D) For acceptance, indexing and recordation of service of
150 process any corporation, limited partnership, limited liability

151 partnership, limited liability company, voluntary association,
152 business trust, insurance company, person or other entity as
153 permitted by law, \$15;

154 (E) For shipping and handling expenses for execution of
155 service of process by certified mail upon any defendant within
156 the United States, which fee is to be deposited to the special
157 revenue account established in this section for the operation of
158 the office of the Secretary of State, \$5; and

159 (F) For shipping and handling expenses for execution of
160 service of process upon any defendant outside the United States
161 by registered mail, which fee is to be deposited to the special
162 revenue account established in this section for the operation of
163 the office of the Secretary of State, \$15.

164 (7) For a search of records of the office conducted by
165 employees of or at the expense of the Secretary of State upon
166 request, as follows:

167 (A) For any search of archival records maintained at sites
168 other than the office of the Secretary of State, no less than \$10;

169 (B) For searches of archival records maintained at sites other
170 than the office of the Secretary of State which require more than
171 one hour, for each hour or fraction of an hour consumed in
172 making such search, \$10;

173 (C) For any search of records maintained on site for the
174 purpose of obtaining copies of documents or printouts of data,
175 \$5;

176 (D) For any search of records maintained in electronic
177 format which requires special programming to be performed by
178 the state information services agency or other vendor any actual
179 cost but not less than, \$25, which cost is in addition to the cost
180 of any copies of printouts prepared or any certificate issued
181 pursuant to or based on the search; and

182 (E) For recording any paper for which no specific fee is
183 prescribed, \$5.

184 (8) For producing and providing photocopies or printouts of
185 electronic data of specific records upon request, as follows:

186 (A) For a copy of any paper or printout of electronic data, if
187 one sheet, \$1;

188 (B) For each sheet after the first, \$.50;

189 (C) For sending the copies or lists by fax transmission, \$5:

190 (D) For producing and providing photocopies of lists,
191 reports, guidelines and other documents produced in multiple
192 copies for general public use, a publication price to be
193 established by the Secretary of State at a rate approximating \$2
194 plus \$.10 per page and rounded to the nearest dollar; and

195 (E) For electronic copies of records obtained in data format
196 on disk, the cost of the record in the least expensive available
197 printed format, plus, for each required disk, which shall be
198 provided by the Secretary of State, \$5.

199 (b) The Secretary of State may propose legislative rules for
200 promulgation for charges for on-line electronic access to
201 database information or other information maintained by the
202 Secretary of State.

203 (c) For any other work or service not enumerated in this
204 subsection, the fee prescribed elsewhere in this code or a rule
205 promulgated under the authority of this code.

206 (d) The records maintained by the Secretary of State are
207 prepared and indexed at the expense of the state and those
208 records may not be obtained for commercial resale without the
209 written agreement of the state to a contract including
210 reimbursement to the state for each instance of resale.

211 (e) The Secretary of State may provide printed or electronic
212 information free of charge as he or she considers necessary and
213 efficient for the purpose of informing the general public or the
214 news media.

215 (f) There is hereby continued in the State Treasury a special
216 revenue account to be known as the "service fees and
217 collections" account. Expenditures from the account shall be
218 used for the operation of the office of the Secretary of State and
219 are not authorized from collections but are to be made only in
220 accordance with appropriation by the Legislature and in
221 accordance with the provisions of article three, chapter twelve of
222 this code and upon the fulfillment of the provisions set forth in
223 article two, chapter five-a of this code. Notwithstanding any
224 other provision of this code to the contrary, except as provided
225 in subsection (h) of this section and section two-a of this article,
226 one half of all the fees and service charges established in the
227 following sections and for the following purposes shall be
228 deposited by the Secretary of State or other collecting agency to
229 that special revenue account and used for the operation of the
230 office of the Secretary of State:

231 (1) The annual attorney-in-fact fee for corporations and
232 limited partnerships established in section five, article twelve-c,
233 chapter eleven of this code;

234 (2) The fees received for the sale of the State Register, Code
235 of State Rules and other copies established by rule and
236 authorized by section seven, article two, chapter twenty-nine-a
237 of this code;

238 (3) The registration fees, late fees and legal settlements
239 charged for registration and enforcement of the charitable
240 organizations and professional solicitations established in
241 sections five, nine and fifteen-b, article nineteen, chapter twenty-
242 nine of this code;

243 (4) The annual attorney-in-fact fee for limited liability
244 companies as designated in section one hundred eight, article
245 one, chapter thirty-one-b of this code and established in section
246 two hundred eleven, article two of said chapter. After June 30,
247 2008, the annual report fees designated in section one hundred
248 eight, article one, chapter thirty-one-b of this code shall upon
249 collection be deposited in the general administrative fees account
250 described in subsection (h) of this section;

251 (5) The filing fees and search and copying fees for uniform
252 commercial code transactions established by section five
253 hundred twenty-five, article nine, chapter forty-six of this code;

254 (6) The annual attorney-in-fact fee for licensed insurers
255 established in section twelve, article four, chapter thirty-three of
256 this code;

257 (7) The fees for the application and record maintenance of
258 all notaries public established by section one hundred seven,
259 article one, chapter twenty-nine-c of this code;

260 (8) The fees for the application and record maintenance of
261 commissioners for West Virginia as established by section
262 twelve, article four, chapter twenty-nine of this code;

263 (9) The fees for registering credit service organizations as
264 established by section five, article six-c, chapter forty-six-a of
265 this code;

266 (10) The fees for registering and renewing a West Virginia
267 limited liability partnership as established by section one, article
268 ten, chapter forty-seven-b of this code;

269 (11) The filing fees for the registration and renewal of
270 trademarks and service marks established in section seventeen,
271 article two, chapter forty-seven of this code;

272 (12) All fees for services, the sale of photocopies and data
273 maintained at the expense of the Secretary of State as provided
274 in this section; and

275 (13) All registration, license and other fees collected by the
276 Secretary of State not specified in this section.

277 (g) Any balance in the service fees and collections account
278 established by this section which exceeds \$500,000 as of June
279 30, 2003, and each year thereafter, expires to the state fund,
280 General Revenue Fund.

281 (h)(1) Effective July 1, 2008, there is hereby created in the
282 State Treasury a special revenue account to be known as the
283 general administrative fees account. Expenditures from the
284 account shall be used for the operation of the Office of the
285 Secretary of State and are not authorized from collections but are
286 to be made only in accordance with appropriation by the
287 Legislature and in accordance with the provisions of article
288 three, chapter twelve of this code and upon the fulfillment of the
289 provisions set forth in article two, chapter eleven-b of this code.
290 For the fiscal year ending June 30, 2009, expenditures are
291 authorized from collections rather than pursuant to an
292 appropriation by the Legislature. Any balance in the account at
293 the end of each fiscal year shall not revert to the General
294 Revenue Fund but shall remain in the fund and be expended as
295 provided by this subsection.

296 (2) After June 30, 2008, all the fees and service charges
297 established in section two-a of this article for the following
298 purposes shall be collected and deposited by the Secretary of
299 State or other collecting agency in the general administrative
300 fees account and used for the operation of the Office of the
301 Secretary of State:

302 (A) The annual report fees paid to the Secretary of State by
303 corporations, limited partnerships, domestic limited liability
304 companies and foreign limited liability companies;

305 (B) The fees for the issuance of a certificate relating to the
306 initial registration of a corporation, limited partnership, domestic
307 limited liability company or foreign limited liability company
308 described in subdivision (2), subsection (a) of this section; and

309 (C) The fees for the purchase of date and updates related to
310 the state's Business Organizations Database described in section
311 two-a of this article.

312 (i) There is continued in the office of the Secretary of State
313 a noninterest bearing, escrow account to be known as the
314 "prepaid fees and services account". This account is for the
315 purpose of allowing customers of the Secretary of State to
316 prepay for services, with payment to be held in escrow until
317 services are rendered. Payments deposited in the account shall
318 remain in the account until services are rendered by the
319 Secretary of State and at that time the fees will be reallocated to
320 the appropriate general or special revenue accounts. There shall
321 be no fee charged by the Secretary of State to the customer for
322 the use of this account and the customer may request the return
323 of any moneys maintained in the account at any time without
324 penalty. The assets of the prepaid fees and services account do
325 not constitute public funds of the state and are available solely
326 for carrying out the purposes of this section.

CHAPTER 177

**(Com. Sub. for H. B. 2567 - By Delegates Morgan,
Stephens, Diserio, Jones, Paxton, P. Smith and Stagers)**

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §47-9-44 of the Code of West Virginia,
1931, as amended; and to amend said code by adding thereto two

new sections, designated §47-9-10a and §47-9-53a, all relating to limited partnerships; authorizing the Secretary of State to administratively dissolve and reinstate limited partnerships; allowing appeals to the circuit court; and authorizing the Secretary of State to revoke and reinstate certificates of authority of foreign limited partnerships.

Be it enacted by the Legislature of West Virginia:

That §47-9-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §47-9-10a and §47-9-53a, all to read as follows:

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-10a. Administrative dissolution of a limited partnership; reinstatement; appeals.

1 (a) The Secretary of State may commence a proceeding to
2 administratively dissolve a limited partnership if the limited
3 partnership does not:

4 (1) Pay all applicable fees, franchise taxes or penalties
5 imposed by this chapter or other law within sixty days after the
6 due date; or

7 (2) Deliver its annual report to the Secretary of State within
8 sixty days after the due date; or

9 (3) The professional license of one or more of the license
10 holders is revoked by a professional licensing board and the
11 license is required for the continued operation of the limited
12 partnership; or

13 (4) The limited partnership is in default with the Bureau of
14 Employment Programs as provided in section six, article two,
15 chapter twenty-one-a of this code.

16 (b) If the Secretary of State determines that adequate
17 grounds exist to administratively dissolve a limited partnership,
18 the Secretary of State shall make and file a record of the
19 determination and serve the limited partnership with a notice of
20 the determination along with copy of the record by certified
21 mail.

22 (1)(A) The limited partnership must correct each issue
23 described in the dissolution record or take reasonable steps
24 toward correcting each issue within sixty days of service of the
25 record on the limited partnership.

26 (B) If the limited partnership fails to take adequate steps
27 toward correcting the issue or issues described in the record, the
28 Secretary of State may administratively dissolve the limited
29 partnership by signing the certification of dissolution.

30 (C) The Secretary of State shall file the original certificate
31 of dissolution and serve a copy of the certificate of dissolution
32 to the limited partnership by certified mail.

33 (2) A limited partnership that has been administratively
34 dissolved may continue its existence only to the extent necessary
35 to wind up and liquidate its business and affairs.

36 (3) The administrative dissolution of a limited partnership
37 does not terminate the authority of its agent for service of
38 process.

39 (c) A limited partnership that has been administratively
40 dissolved may apply to the Secretary of State for reinstatement
41 within two years after the effective date of dissolution. The
42 application for reinstatement must:

43 (1) Recite the name of the limited partnership and the
44 effective date of its administrative dissolution;

45 (2) Demonstrate that the grounds for dissolution either did
46 not exist or have been eliminated;

47 (3) Demonstrate that the limited partnership's name satisfies
48 the requirements of section two, article nine, chapter forty-seven
49 of this code; and

50 (4) Contain a certificate from the Tax Commissioner reciting
51 that all taxes owed by the limited partnership have been paid.

52 (d)(1) If the Secretary of State determines that the
53 application for reinstatement contains the information required
54 by subsection (c) of this section and that the information is
55 accurate, the Secretary of State shall cancel the certificate of
56 dissolution and prepare a certificate of reinstatement that recites
57 this determination and the effective date of reinstatement.

58 (2) The Secretary of State shall file the certificate of
59 reinstatement and serve the limited partnership with a copy of
60 the certificate.

61 (e) When the Secretary of State grants a reinstatement, the
62 reinstatement relates back to and takes effect as of the effective
63 date of the administrative dissolution and the limited partnership
64 resumes its business as if the administrative dissolution had
65 never occurred.

66 (f) If the Secretary of State denies a limited partnership's
67 application for reinstatement following administrative
68 dissolution, the Secretary of State shall serve the limited
69 partnership with a notice that explains the reason or reasons for
70 denial.

71 (g) A limited partnership may appeal a denial of
72 reinstatement by filing a petition to set aside the dissolution in
73 the circuit court of Kanawha County within thirty days after the
74 date upon which the limited partnership received notice of the

75 denial of reinstatement. The petition shall include a copy of the
76 Secretary of State's certificate of dissolution, the limited
77 partnership's application for reinstatement and the Secretary of
78 State's notice of denial. A copy of the petition shall be served on
79 the Secretary of State by certified mail.

80 (h) If a reinstatement is granted by the court, the
81 reinstatement relates back to and takes effect as of the effective
82 date of the administrative dissolution and the limited partnership
83 resumes its business as if the administrative dissolution had
84 never occurred.

§47-9-44. Nonjudicial dissolution.

1 A limited partnership is dissolved and its affairs shall be
2 wound up upon the happening of the first to occur of the
3 following;

4 (1) At the time or upon the happening of events specified in
5 the certificate of limited partnership;

6 (2) Upon the happening of events specified in writing in the
7 partnership agreement;

8 (3) The written consent of all partners;

9 (4) An event of withdrawal of a general partner, unless at the
10 time there is at least one other general partner and the written
11 provisions of the partnership agreement permit the business of
12 the limited partnership to be carried on by the remaining general
13 partner and that partner does so, but the limited partnership is not
14 dissolved and is not required to be wound up by reason of any
15 event of withdrawal if, within ninety days after the withdrawal,
16 all partners agree in writing to continue the business of the
17 limited partnership and to the appointment of one or more
18 additional general partners if necessary or desired;

19 (5) Entry of a decree of judicial dissolution under section
20 forty-five of this article; or

21 (6) Signing of a certificate of dissolution by the Secretary of
22 State under section ten-a of this article.

**§47-9-53a. Revocation and reinstatement of foreign limited
partnership certificates of authority.**

1 (a) The Secretary of State may revoke a certificate of
2 authority of a foreign limited partnership to transact business in
3 this state in the manner set forth in subsection (b) of this section
4 if:

5 (1) The limited partnership fails to:

6 (A) Pay all applicable fees, franchise taxes and penalties
7 owed to the state within sixty days after the due date;

8 (B) Deliver its annual report within sixty days of the due
9 date; or

10 (C) File a statement to change a name or business address of
11 an agent as required by this article; or

12 (2) The limited partnership has made a misrepresentation of
13 any material fact in any application, report, affidavit or other
14 record submitted pursuant to this article; or

15 (3) The professional license of one or more of the license
16 holders is revoked by a professional licensing board and the
17 license is required for the continued operation of the limited
18 partnership; or

19 (4) The limited partnership is in default with the Bureau of
20 Employment Programs as provided in section six, article two,
21 chapter twenty-one-a of this code.

22 (b)(1) The Secretary of State may not revoke a certificate of
23 authority of a foreign limited partnership unless the Secretary of

24 State serves notice to the foreign limited partnership of the
25 Secretary's intent to revoke the foreign limited partnership's
26 certificate of authority at least sixty days prior to the effective
27 date of the revocation, by a notice addressed to the foreign
28 limited partnership's principal office.

29 (2) The notice must specify the cause for the revocation of
30 the certificate of authority.

31 (3) The authority of the foreign limited partnership to
32 transact business in this state ceases on the effective date of the
33 revocation.

34 (c) A foreign limited partnership that has been
35 administratively revoked may apply to the Secretary of State for
36 reinstatement within two years after the effective date of
37 revocation. The application must:

38 (1) Recite the name of the foreign limited partnership and
39 the effective date of its administrative revocation;

40 (2) Demonstrate that the grounds for revocation either did
41 not exist or have been eliminated;

42 (3) Demonstrate that the foreign limited partnership's name
43 satisfies the requirements of section two, article nine, chapter
44 forty-seven of this code; and

45 (4) Contain a certificate from the Tax Commissioner reciting
46 that all taxes owed by the foreign limited partnership have been
47 paid.

48 (d) If the Secretary of State determines that the application
49 for reinstatement contains the information required by
50 subsection (c) of this section and that the information is correct,
51 the Secretary of State shall cancel the certificate of revocation
52 and prepare a certificate of reinstatement that recites this
53 determination and the effective date of reinstatement.

54 (2) The Secretary of State shall file the certificate of
55 reinstatement, and serve the foreign limited partnership with a
56 copy of the certificate.

57 (e) When the Secretary of State grants a reinstatement, the
58 reinstatement relates back to and takes effect as of the effective
59 date of the administrative revocation and the foreign limited
60 partnership resumes its business as if the administrative
61 revocation had never occurred.

CHAPTER 178

**(Com. Sub. for S. B. 202 - By Senator Kessler (Mr. President),
Fitzsimmons, Beach, Miller, Laird, Nohe and Stollings)**

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 1, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-20C-1, §19-20C-2 and §19-20C-3, all relating to establishing the West Virginia Spay Neuter Assistance Program and Fund; designating the Commissioner of the Department of Agriculture to manage the program and fund; providing grants to nonprofit spay neuter programs in state; limiting administrative expenses of fund; requiring annual reporting; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §19-20C-1, §19-20C-2 and §19-20C-3, all to read as follows:

ARTICLE 20C. WEST VIRGINIA SPAY NEUTER ASSISTANCE PROGRAM.**§19-20C-1. West Virginia Spay Neuter Assistance Program.**

1 The Department of Agriculture shall establish a spay neuter
2 assistance program that provides grants to nonprofit spay neuter
3 organizations and programs in the state. The purpose of this
4 program is to have more dogs and cats sterilized, thereby
5 reducing shelter populations and costs, euthanasia rates and
6 threats to public health and safety from rabies and other
7 problems posed by the growing population of stray, feral and
8 abandoned dogs and cats.

§19-20C-2. Fund established; acceptance of funds.

1 (a) There is created in the State Treasury a special revenue
2 account to be designated the West Virginia Spay Neuter
3 Assistance Fund and administered by the Commissioner of
4 Agriculture. Expenditures from the fund are for the purposes set
5 forth in this article and are to be made in accordance with
6 appropriation by the Legislature and in accordance with the
7 provisions of article three, chapter twelve of this code and upon
8 the fulfillment of the provisions set forth in article two, chapter
9 eleven-b of this code.

10 (b) All moneys received and collected pursuant to this article
11 shall be deposited into the fund. The fund may receive any
12 appropriations, gifts, grants, contributions or other money from
13 any source that is designated for deposit into the fund.

14 (c) Administrative expenses of the department may not
15 exceed ten percent of the funds deposited in any fiscal year. The
16 remainder shall be used exclusively for implementation of the
17 program.

§19-20C-3. Rulemaking; annual report.

1 (a) The commissioner shall propose rules for legislative
2 approval in accordance with article three, chapter twenty-nine-a
3 of this code, to implement the provisions of this article.

4 (b) Rules promulgated under this section shall, at a
5 minimum:

6 (1) Identify the types of nonprofit organizations and
7 programs that qualify for spay neuter grants;

8 (2) Establish parameters for spay neuter grants;

9 (3) Establish procedures and requirements for grant
10 applications; and

11 (4) Establish administration, record-keeping and reporting
12 requirements for nonprofit organizations and programs that
13 receive spay neuter grants.

14 (c) Beginning the year following the program's inception,
15 the commissioner shall file an annual report with the Joint
16 Committee on Government and Finance regarding the program,
17 funds received and grants awarded, the number of dogs and cats
18 sterilized and other pertinent data.

CHAPTER 179

**(Com. Sub. for H. B. 2836 - By Delegates Boggs,
White, Lane and Ellem)**

[Passed April 13, 2013; in effect from passage.]

{Approved by the Governor on May 3, 2013.}

AN ACT to amend and reenact §4-5-2 of the Code of West Virginia,
1931, as amended, relating to the Commission on Special

Investigations generally; granting certain commission personnel the right to carry firearms in the course of their employment; establishing minimum training and certification requirements for such personnel; requiring such personnel to secure a license to carry a concealed weapon in accordance with the provisions of article seven, chapter sixty-one of this code.

Be it enacted by the Legislature of West Virginia:

That §4-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COMMISSION ON SPECIAL INVESTIGATIONS.

§4-5-2. Powers and duties generally.

1 (a) The Commission on Special Investigations shall have the
2 power, duty and responsibility, upon a majority vote of the
3 members appointed, to:

4 (1) Conduct a comprehensive and detailed investigation into
5 the purchasing practices and procedures of the state;

6 (2) Determine if there is reason to believe that the laws or
7 public policy of the state in connection with purchasing practices
8 and procedures have been violated or are inadequate;

9 (3) Determine if any criminal or civil statutes relating to the
10 purchasing practices and procedures in this state are necessary
11 to protect and control the expenditures of money by the state;

12 (4) Investigate or examine any matter involving conflicts of
13 interest, bribery of state officials, malfeasance, misfeasance or
14 nonfeasance in office by any employee or officer of the state;

15 (5) Conduct comprehensive and detailed investigations to
16 determine if any criminal or civil statutes have been violated at
17 any level of state government;

18 (6) Determine whether to recommend criminal prosecution
19 or civil action for any violation, either criminal or civil, at any

20 level of state government and, if it is determined that action is
21 necessary, to make appropriate recommendation to the Attorney
22 General, prosecuting attorney or other authority empowered to
23 act on such recommendation; and

24 (7) Make such written reports to the members of the
25 Legislature between sessions thereof as the commission may
26 deem advisable and on the first day of each regular session of the
27 Legislature make an annual report to the Legislature containing
28 the commission's findings and recommendations including in
29 such report drafts of any proposed legislation which it deems
30 necessary to carry such recommendations into effect.

31 (b) The commission is also expressly empowered and
32 authorized to:

33 (1) Sit during any recess of the Senate and House of
34 Delegates;

35 (2) Recommend to the judge of any circuit court that a grand
36 jury be convened pursuant to the provisions of section fourteen,
37 article two, chapter fifty-two of this code, to consider any matter
38 which the commission may deem in the public interest and, in
39 support thereof, make available to such court and such grand
40 jury the contents of any reports, files, transcripts of hearings or
41 other evidence pertinent thereto;

42 (3) Employ such legal, technical, investigative, clerical,
43 stenographic, advisory and other personnel as it deems needed
44 and, within the appropriation herein specified, fix reasonable
45 compensation of such persons and firms as may be employed:
46 *Provided*, That such personnel as the commission may determine
47 shall have the authority to administer oaths and take affidavits
48 and depositions anywhere in the state.

49 (4) Consult and confer with all persons and agencies, public
50 (whether federal, state or local) and private, that have
51 information and data pertinent to an investigation; and all state

52 and local governmental personnel and agencies shall cooperate
53 to the fullest extent with the commission;

54 (5) Call upon any department or agency of state or local
55 government for such services, information and assistance as it
56 may deem advisable; and

57 (6) Refer such matters as are appropriate to the office of the
58 United States attorney and cooperate with such office in the
59 disposition of matters so referred.

60 (c) Notwithstanding any provision of this code to the
61 contrary, specific personnel may be designated by the
62 commission to carry a firearm in the course of performing his or
63 her official duties: *Provided*, That as a precondition of being
64 authorized to carry a concealed weapon in the course of their
65 official duties, any such designated personnel must have first
66 successfully completed a firearms training and certification
67 program which is equivalent to that which is required of
68 members of the state police. The designated persons must also
69 possess a license to carry a concealed deadly weapon in the
70 manner prescribed in article seven, chapter sixty-one of this
71 code.

CHAPTER 180

(H. B. 2968 - By Delegates Boggs and Young)

[Passed April 12, 2013; in effect July 1, 2013.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §5A-8-20 of the Code of West Virginia, 1931, as amended, relating to the creation of preservation duplicates of state records and destruction of the original records;

authorizing the use of additional medium for use in archiving the records; setting forth the standards the additional medium must meet; requiring the state records administrator to establish a procedure for executive agencies to follow; permitting, consistent with the State Constitution, each house of the Legislature to determine on its own or jointly the procedure for the storage of legislative records; permitting any person or entity to purchase one copy of any archived or preserved state record; and defining a term.

Be it enacted by the Legislature of West Virginia:

That §5A-8-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-20. Alternate storage of state records.

1 (a) *Findings and purpose.* — The Legislature finds that
2 continuous advances in technology have resulted and will
3 continue to result in the development of alternate formats for the
4 nonerasable storage of state records, and that the use of such
5 alternative storage formats, where deemed advisable, promote
6 the efficient and economical administration of government and
7 provide a means for the preservation of valuable records that are
8 subject to decay or destruction. It is the purpose of the
9 Legislature to authorize the storage of state records in those
10 alternate formats, as may be determined by the various branches
11 of the government of this state, that will reasonably ensure that
12 the originals of those records are copied into alternative formats
13 in a manner in which the image of the original records is not
14 erased or altered, and from which true and accurate
15 reproductions of the original state records may be retrieved.

16 (b) *Approved format.* — (1) In addition to those formats,
17 processes and systems described in section ten of this article,

18 sections seven-a and seven-c, article one, chapter fifty-seven of
19 this code, and section twelve, article five of that chapter which
20 are otherwise authorized for the reproduction of state records, a
21 preservation duplicate of a state record may be stored in any
22 approved format where the image of the original state record is
23 preserved in a form in which the image thereof is incapable of
24 erasure or alteration, and from which a reproduction of the stored
25 state record may be retrieved which truly and accurately depicts
26 the image of the original state record.

27 (2) As a substitute for using medium that is incapable of
28 erasure or alteration, a preservation duplicate of a state record
29 may be stored on other electronic storage medium or other
30 medium capable of storing digitized documents if:

31 (A) The medium is stored to maximize its life by minimizing
32 exposure to environmental contaminants;

33 (B) At least two copies of the preservation duplicate are
34 made and one copy is stored in an off-site location; and

35 (C) A procedure is established and followed which ensures
36 that:

37 (i) Modifications in the archiving process are made as
38 technology changes so that the preservation duplicates are
39 readily accessible, which may include migrating the preservation
40 duplicates to different medium or different file formats; and

41 (ii) The medium is periodically examined to determine if the
42 preservation duplicates remain readable and intact.

43 (c) *Executive agency records.* — (1) The alternate formats
44 for the storage of state records described in this section are
45 authorized for the storage of the state records of any agency of
46 this state. The state records administrator shall establish a
47 procedure for executive agencies to follow implementing the

48 provisions of subsection (b) of this section by July 1, 2013. The
49 procedure shall include, at a minimum, the identification of
50 examples of medium and accompanying procedures to be
51 followed for executive agencies when making preservation
52 duplicates of state records on medium readily available, other
53 than microfilm or microfiche.

54 (2) Upon creation of a preservation duplicate from which a
55 reproduction of the stored state record may be retrieved which
56 truly and accurately depicts the image of the original state
57 record, the state records administrator may destroy or otherwise
58 dispose of the original in accordance with the provisions of
59 section seventeen of this article for the destruction of records.

60 (d) *Judicial records.* — (1) Except for those formats,
61 processes and systems used for the storage of state records on the
62 effective date of this section, no alternate format for the storage
63 of state records described in this section is authorized for the
64 storage of the state records of any court of this state unless the
65 particular format has been approved by the Supreme Court of
66 Appeals by rule. This section does not prohibit the Supreme
67 Court of Appeals from prohibiting the use of any format, process
68 or system used for the storage of judicial state records upon its
69 determination that the same is not reasonably adequate to
70 preserve the state records from destruction, alteration or decay.

71 (2) Upon creation of a preservation duplicate which stores an
72 original judicial state record in an approved format from which
73 a reproduction of the stored state record may be retrieved which
74 truly and accurately depicts the image of the original state
75 record, the court or the clerk thereof creating the same may,
76 consistent with rules of the Supreme Court of Appeals, destroy
77 or otherwise dispose of the original in accordance with the
78 provisions of section seven, article one, chapter fifty-seven of
79 this code for the destruction of records.

80 (e) *Legislative records.* — In accordance with all applicable
81 provisions of the West Virginia Constitution, the procedures for

82 the storage and destruction of legislative records shall be
83 determined by each house, or by a joint rule.

84 (f) Upon request and payment of a reasonable cost, one copy
85 of any state record archived or preserved pursuant to the
86 provisions of this article shall be provided to any person or
87 entity: *Provided*, That the person or entity that has produced the
88 state record may receive one copy without charge. For the
89 purpose of this subsection “state record” means electronic record
90 created and maintained by state agencies.

CHAPTER 181

**(Com. Sub. for S. B. 464 - By Senators Stollings, Beach, Wells,
Kessler (Mr. President), Yost and Unger)**

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 1, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-45-1, §16-45-2, §16-45-3, §16-45-4, §16-45-5 and §16-45-6, all relating generally to regulation of tanning facilities; defining terms; setting forth requirements for registration, inspection and obtaining a permit; requiring a consent form; setting forth consent form language; creating operating standards; prohibiting the use of tanning devices by anyone under the age of eighteen; granting rule-making authority to the Department of Health and Human Resources to regulate tanning facilities; setting forth minimum requirements for the rule; allowing fees; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-45-1, §16-45-2, §16-45-3, §16-45-4 and §16-45-5, all to read as follows:

ARTICLE 45. TANNING FACILITIES.**§16-45-1. Definitions.**

1 As used in this article:

2 (1) "Photo therapy device" means a device used for exposure
3 to daylight or to specific wavelengths of light using lasers,
4 light-emitting diodes, fluorescent lamps, dichroic lamps or very
5 bright, full-spectrum light, usually controlled with various
6 devices.

7 (2) "Tanning device" means any equipment that emits
8 radiation used for tanning of the skin, such as a sun lamp,
9 tanning booth or tanning bed, and includes any accompanying
10 equipment, such as protective eye wear, timers and handrails.

11 (3) "Tanning facility" means any commercial location,
12 place, area, structure or business where a tanning device is used
13 for a fee, membership dues or other compensation.

§16-45-2. Exception for health care providers.

1 Nothing in this article may be construed as prohibiting any
2 health care provider licensed under chapter thirty of this code
3 from performing any action within the scope of his or her
4 practice that results in prescribing the use of a photo therapy
5 device to a patient regardless of the patient's age for treatment
6 of a medical condition.

§16-45-3. Operation standards.

1 (a) A tanning facility shall provide to any patron who wishes
2 to use a tanning device located within its tanning facility a
3 disclosure and consent form relating to use of a tanning device
4 that contains the current United States Food and Drug
5 Administration warning as follows: "Danger. Ultraviolet
6 Radiation. Follow instructions. Avoid overexposure. As with
7 natural sunlight, overexposure can cause eye and skin injury and
8 allergic reactions. REPEATED EXPOSURE MAY CAUSE

9 PREMATURE AGING OF THE SKIN AND SKIN CANCER.
10 WEAR PROTECTIVE EYEWEAR; FAILURE TO DO SO
11 MAY RESULT IN SEVERE BURNS OR LONG-TERM
12 INJURY TO THE EYES. Medications or cosmetics may
13 increase your sensitivity to the ultraviolet radiation. Consult
14 physician before using tanning device if you are using
15 medications or have a history of skin problems or believe
16 yourself especially sensitive to sunlight. If you do not tan in the
17 sun, you are unlikely to tan from use of this product.”

18 The disclosure and consent form must have a place for the
19 patron’s signature and the date. A signed and dated copy of the
20 disclosure and consent form shall be maintained by the tanning
21 facility and remains valid for one year from the date it was
22 signed.

23 (b) All patrons are required to present proof of age prior to
24 use of a tanning device. Proof of age shall be satisfied with a
25 driver’s license or other government-issued identification
26 containing the date of birth and a photograph of the individual.
27 Persons under the age of eighteen may not be permitted to use a
28 tanning device without the prior written consent of the person’s
29 parent or legal guardian. Photographic identification of the
30 parent or legal guardian is required. A copy of the signed
31 parental or legal guardian consent shall be maintained by the
32 tanning facility and remains valid for one year from the date it
33 was signed. Persons under the age of fourteen may not be
34 permitted to use a tanning device.

§16-45-4. Local health department authority to inspect.

1 Local health departments shall have the authority to enter
2 and inspect a tanning facility to determine compliance with the
3 requirements of this article.

§16-45-5. Violations and penalties.

1 (a) Any owner of a tanning facility who fails to obtain
2 parental consent for a minor under the age of eighteen or

3 otherwise violates the requirements of this article is guilty of a
4 misdemeanor and, upon conviction thereof, for a first offense,
5 shall be fined \$100.

6 (b) For a second offense, the owner is guilty of a
7 misdemeanor and, upon conviction thereof, shall be fined not
8 less than \$250 nor more than \$500.

9 (c) For a third offense or subsequent offense, the owner is
10 guilty of a misdemeanor and, upon conviction thereof, shall be
11 fined not less than \$500 nor more than \$1,000.

CHAPTER 182

**(S. B. 441 - By Senators Prezioso, Facemire,
Stollings, Plymale and McCabe)**

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §11-10-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §38-10C-2 of said code, all relating to the withdrawal of state tax liens recorded prematurely, inadvertently or erroneously.

Be it enacted by the Legislature of West Virginia:

That §11-10-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §38-10C-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-12. Liens, release; subordination; foreclosure; withdrawal.

1 (a) *General.* – Any tax, additions to tax, penalties or interest
2 due and payable under this article or any of the other articles of
3 this chapter to which this article is applicable is a debt due this
4 state. It is a personal obligation of the taxpayer and is a lien upon
5 the real and personal property of the taxpayer.

6 (b) *Duration of lien.* – The lien created by this section
7 continues until the liability for the tax, additions to tax, penalties
8 and interest is satisfied or upon the expiration of ten years from
9 the date the tax, additions to tax, penalties and interest are due
10 and payable under section eight of this article or the date the tax
11 return is filed, whichever is later.

12 (c) *Recordation.* – The lien created by this section is subject
13 to the restrictions and conditions embodied in article ten-c,
14 chapter thirty-eight of this code and any amendment made or
15 which may hereafter be made thereto: *Provided*, That the notice
16 of lien shall indicate the date the tax, additions to tax, penalties
17 and interest are due and payable under section eight of this
18 article or the date the tax return was filed.

19 (d) *Release or subordination.* – The Tax Commissioner,
20 pursuant to rules prescribed by him or her, may issue his or her
21 certificate of release of any lien created pursuant to this section
22 when the debt is adequately secured by bond or other security.
23 He or she shall issue his or her certificate of release when the
24 debt secured has been satisfied. The certificate of release shall be
25 issued in duplicate. One copy shall be forwarded to the taxpayer,
26 and the other copy shall be forwarded to the clerk of the county
27 commission of the county wherein the lien is recorded. The clerk
28 of the county commission shall record the release without
29 payment of any fee and the recordation is a release and full
30 discharge of the lien. The Tax Commissioner may issue his or
31 her certificate of release of the lien as to all or any part of the

32 property subject to the lien, or may subordinate the lien to any
33 other lien or interest, but only if there is paid to the state an
34 amount not less than the value of the interest of the state in the
35 property, or if the interest of the state in the property has no
36 value.

37 (e) *Foreclosure.* – The Tax Commissioner may enforce any
38 lien created and recorded under this section, against any property
39 subject to the lien by civil action in the circuit court of the
40 county wherein the property is located, in order to subject the
41 property to the payment of the tax secured by the lien. All
42 persons having liens upon or having any interest in the property
43 shall be made parties to the action. The court may appoint a
44 receiver or commissioner who shall ascertain and report all liens,
45 claims and interests in and upon the property, the validity,
46 amount and priority of each. The court shall, after notice to all
47 parties, proceed to adjudicate all matters involved therein, shall
48 determine the validity, amount and priorities of all liens, claims
49 and interests in and upon the property and shall decree a sale of
50 the property by the sheriff or any commissioner to whom the
51 action is referred, and shall decree distribution of the proceeds
52 of the sale according to the findings of the court in respect to the
53 interests of the parties.

54 (f) *Discharge of lien.* – A sale of property against which the
55 state has a lien under this section, made pursuant to an
56 instrument creating a lien on the property, or made pursuant to
57 a statutory lien on the property, or made pursuant to a judicial
58 order to enforce any judgment in any civil action, shall be made
59 subject to and without disturbing the state tax lien if the state tax
60 lien was recorded more than thirty days before the sale, unless:

61 (1) The Tax Commissioner is made a party to the civil
62 action;

63 (2) The Tax Commissioner is given notice of the sale in
64 writing not less than fifteen days prior to sale; or

65 (3) The Tax Commissioner consents to the sale. The notice
66 shall contain the name of the owner of the property and the
67 social security number or federal employer identification number
68 of the owner.

69 (g) *Withdrawal of lien.* – Upon the determination of the Tax
70 Commissioner or the Tax Commissioner’s designee that the lien
71 was recorded prematurely, inadvertently or otherwise
72 erroneously, a withdrawal of the lien shall be issued in duplicate.
73 One copy shall be forwarded to the taxpayer, and the other copy
74 shall be forwarded to the clerk of the county commission of the
75 county wherein the lien is recorded. The clerk of the county
76 commission shall record the withdrawal of lien without payment
77 of any fee.

CHAPTER 38. LIENS.

ARTICLE 10C. STATE AND LOCAL TAX LIENS.

§38-10C-2. Notices of liens of state, political subdivisions and municipalities to be filed; indexes; withdrawal release.

1 It is the duty of the Tax Commissioner, or the proper officers
2 of the political subdivisions of the state for its subdivisions and
3 of the proper officers of the municipalities for the municipalities,
4 having liens, to file a notice of the liens in the office of the clerk
5 of the county commission of the county in which the property of
6 the taxpayer against whom the lien is claimed, is situate, stating
7 in the notice what amount of money is owing to the State of
8 West Virginia, the political subdivision or the municipality, on
9 account of the lien from the taxpayer owing the money; and the
10 clerk of the county commission of the county shall, upon the
11 filing of notice, index the lien in the judgment or tax lien docket
12 in his or her office as a tax lien against the taxpayer in favor of
13 the State of West Virginia, the political subdivision or the

14 municipality. Upon the determination of the Tax Commissioner
15 or the Tax Commissioner's designee that the lien was recorded
16 prematurely, inadvertently or otherwise erroneously, a
17 withdrawal of the lien shall be issued in duplicate. One copy
18 shall be forwarded to the taxpayer, and the other copy shall be
19 forwarded to the clerk of the county commission of the county
20 wherein the lien is recorded. The clerk of the county commission
21 shall record the withdrawal of lien without payment of any fee.
22 Upon the satisfaction of the lien, a release of the lien for
23 recordation shall be signed and delivered to the taxpayer by the
24 proper officer. The signature of the Tax Commissioner or the
25 Tax Commissioner's designee on the notice and on the release
26 or withdrawal may be either a properly acknowledged manual
27 signature or a facsimile signature authenticated pursuant to the
28 filing of an affidavit and a manual signature with the Secretary
29 of State in the manner specified in section two, article fourteen,
30 chapter six of this code. The facsimile signature has the same
31 legal effect as the manual signature.

32 All acts or parts of acts inconsistent or in conflict herewith
33 are hereby repealed.

CHAPTER 183

**(Com. Sub. for H. B. 2585 - By Delegates Skaff, Craig, P. Smith,
Poore, Guthrie, Hunt, Reynolds, White, Raines and E. Nelson)**

[Passed April 9, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §11-3-15c and §11-3-15d of the Code of West Virginia, 1931, as amended, relating to increasing the time

to file a petition for review or appeal in response to a notice of an increased assessment of certain real and personal property; and defining business day.

Be it enacted by the Legislature of West Virginia:

That §11-3-15c and §11-3-15d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. PROPERTY TAX ASSESSMENTS GENERALLY.

§11-3-15c. Petition for assessor review of improper valuation of real property.

1 (a) A taxpayer who is of the opinion that his or her real
2 property has been valued too high or otherwise improperly
3 valued or listed in the notice given as provided in section two-a
4 of this article may, but is not required to, file a petition for
5 review with the assessor on a written form prescribed by the Tax
6 Commissioner. This section shall not apply to industrial and
7 natural resource property appraised by the Tax Commissioner.

8 (b) The petition shall state the taxpayer's opinion of the true
9 and actual value of the property and substantial information that
10 justifies that opinion of value for the assessor to consider for
11 purposes of basing a change in classification or correction of the
12 valuation. For purposes of this subsection, the taxpayer shall
13 provide substantial information to justify the opinion of value by
14 stating the method or methods of valuation on which the opinion
15 is based:

16 (1) Under the income approach, including the information
17 required in section fifteen-e of this article;

18 (2) Under the market approach, including the true and actual
19 value of at least three comparable properties in the same
20 geographic area or the sale of the subject property; or

21 (3) Under the cost approach, including the replacement cost
22 or the cost to build or rebuild the property, plus the true and
23 actual value of the land.

24 (c) The petition may include more than one parcel of
25 property if they are part of the same economic unit according to
26 the Tax Commissioner's guidelines or if they are owned by the
27 same owner, have the same use, are appealed on the same basis
28 and are located in the same tax district or in contiguous tax
29 districts of the county, and are in a form prescribed by the Tax
30 Commissioner.

31 (d) The petition shall be filed within eight business days
32 after the date the taxpayer receives the notice of increased
33 assessment under section two-a of this article or the notice of
34 increased value was published as a Class II-0 legal advertisement
35 as provided in that section. For purposes of this section,
36 'business day' means any day other than Saturday, Sunday or
37 any legal holiday set forth in section one, article two, chapter
38 two of this code.

§11-3-15d. Administrative review of tangible personal property valuation by assessor.

1 (a) The owner of business tangible personal property that is
2 valued by the assessor or the person in whose possession it is
3 found on the assessment date may appeal to the assessor within
4 eight business days after the date the notice of increased
5 assessment required by section fifteen-b of this article was
6 received by filing a petition with the assessor on a form
7 prescribed by the Tax Commissioner. For purposes of this
8 section, 'business day' means any day other than Saturday,
9 Sunday or any legal holiday set forth in section one, article two,
10 chapter two of this code. The petition shall set forth in writing:

11 (1) The taxpayer's opinion of the value of the tangible
12 personal property; and

13 (2) Substantial information that justifies the opinion of value
14 in order for the assessor to consider the information for the
15 purpose of basing a change in the valuation.

16 (b) The assessor shall rule on each petition no later than
17 February 10 of the tax year.

18 (c) The notice of the assessor's ruling provided under this
19 section shall be given in the same manner as prescribed in
20 section fifteen-h of this article.

21 (d) If the request of the petitioner is denied, in whole or in
22 part, the notice required by subsection (c) of this section shall
23 include the grounds for refusing to grant the request contained in
24 the petition.

25 (e) This section shall not apply to tangible personal property
26 appraised by the Tax Commissioner as part of an industrial or
27 natural resource property appraisal.

CHAPTER 184

**(Com. Sub. for S. B. 185 - By Senators Kessler (Mr. President)
and M. Hall)**

[By Request of the Executive]

[Passed April 13, 2013; in effect from passage.]

[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-9 of the Code of West Virginia, 1931, as amended, all relating to the tax credit for alternative-fuel motor vehicles and qualified alternative-

fuel vehicle refueling infrastructure and qualified alternative-fuel vehicle home refueling infrastructure; setting forth legislative findings; defining terms; restricting credit to purchases of and conversions to natural gas-fueled motor vehicles and liquefied petroleum gas-fueled motor vehicles; narrowing allowance of credit for alternative-fuel motor vehicle purchases, alternative-fuel motor vehicle conversions and alternative-fuel motor vehicle refueling infrastructure; outlining eligibility for credit and cessation of eligibility for credit for specified construction, purchases, expenditures, investments, installations or conversions made on or after cessation dates or tax years as specified; requiring that not more than one tax credit be granted under said article six-d, or any combination of articles set forth in said chapter eleven for purchase of an alternative-fuel motor vehicle or for costs relating to conversion of a motor vehicle to an alternative-fuel motor vehicle, or for costs associated with alternative-fuel vehicle refueling infrastructure or for costs associated with alternative-fuel home refueling infrastructure; providing amount of credit for qualified alternative-fuel vehicle refueling infrastructure; providing limitations on credit; allowing pass-through entities to distribute credits to pass-through equity owners in any manner such equity owners see fit; providing for the termination of tax credit for alternative-fuel motor vehicles purchased after December 31, 2017; providing for the termination of tax credit for motor vehicles converted to operate on alternative fuel after December 31, 2017; providing for the termination of tax credit for construction or purchase and installation of alternative-fuel vehicle refueling infrastructure occurring after December 31, 2017; providing for the termination of tax credit for construction or purchase and installation of qualified alternative-fuel vehicle home refueling infrastructure occurring on or after April 15, 2013; providing for the termination of tax credit for purchases of motor vehicles that operate on fuels other than compressed natural gas or liquefied natural gas, or liquefied petroleum gas, occurring on or after April 15, 2013; providing for the termination of tax credit for

conversions of motor vehicles to operate on fuels other than compressed natural gas or liquefied natural gas or liquefied petroleum gas occurring on or after April 15, 2013; providing limitations and restrictions of credit carryover; and providing that credit is nontransferable.

Be it enacted by the Legislature of West Virginia:

That §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6D. ALTERNATIVE-FUEL MOTOR VEHICLE TAX CREDIT.

§11-6D-1. Legislative findings and purpose.

1 Consistent with the public policy as stated in section one,
2 article two-d, chapter twenty-four of this code, the Legislature
3 hereby finds that the use of natural gas-based alternative fuels is
4 in the public interest and promotes the general welfare of the
5 people of this state insofar as it addresses serious concerns for
6 our environment and our state's and nation's dependence on
7 foreign oil as a source of energy. The Legislature further finds
8 that by encouraging the use of natural gas-fueled and liquefied
9 petroleum gas-fueled motor vehicles, the state will be reducing
10 its dependence on foreign oil and attempting to improve its air
11 quality. The Legislature further finds that the wholesale cost of
12 fuel for certain natural gas-fueled and liquefied petroleum gas-
13 fueled motor vehicles is significantly lower than the cost of fuel
14 for traditional motor vehicles.

15 However, because the cost of motor vehicles which utilize
16 natural gas-fueled or liquefied petroleum gas- fueled
17 technologies remains high in relation to motor vehicles that
18 employ more traditional technologies, citizens of this state who
19 might otherwise choose a natural gas- fueled or liquefied

20 petroleum gas-fueled motor vehicle are forced by economic
21 necessity to continue using motor vehicles that are fueled by
22 more conventional means. Additionally, the availability of
23 commercial infrastructure to support natural gas-fueled and
24 liquefied petroleum gas-fueled vehicles available to the public
25 is inadequate to encourage the use of natural gas-fueled and
26 liquefied petroleum gas-fueled motor vehicles. It is the intent of
27 the Legislature that the alternative-fuel motor vehicle tax credit
28 previously expired in 2006 be hereby reinstated with changes
29 and amendments as set forth herein. Therefore, in order to
30 encourage the use of natural gas-fueled and liquefied petroleum
31 gas-fueled motor vehicles and possibly reduce unnecessary
32 pollution of our environment and reduce our dependence on
33 foreign sources of energy, there is hereby created an
34 alternative-fuel motor vehicle tax credit and an alternative-fuel
35 vehicle refueling infrastructure tax credit.

§11-6D-2. Definitions.

1 As used in this article, the following terms have the
2 meanings ascribed to them in this section.

3 (a) "*Alternative fuel*". –

4 (I) For purchase or installations occurring on and after
5 January 1, 2011, but prior to April 15, 2013, the term
6 "alternative fuel" means and includes:

7 (A) Compressed natural gas;

8 (B) Liquefied natural gas;

9 (C) Liquefied petroleum gas;

10 (D) Ethanol;

11 (E) Fuel mixtures that contain eighty-five percent or more by

12 volume, when combined with gasoline or other fuels, of the
13 following:

14 (i) Methanol;

15 (ii) Ethanol; or

16 (iii) Other alcohols;

17 (F) Natural gas hydrocarbons and derivatives;

18 (G) Hydrogen;

19 (H) Coal-derived liquid fuels; and

20 (I) Electricity, including electricity from solar energy.

21 (2) For purchases or installations occurring on or after April
22 15, 2013, the term “alternative fuel” means and is limited to:

23 (A) Compressed natural gas;

24 (B) Liquefied natural gas; or

25 (C) Liquefied petroleum gas.

26 (b) “Alternative-fuel motor vehicle” or “qualified motor
27 vehicle” means a motor vehicle that as a new or retrofitted or
28 converted fuel vehicle:

29 (1) Operates solely on one alternative fuel;

30 (2) Is capable of operating on one or more alternative fuels,
31 singly or in combination; or

32 (3) Is capable of operating on an alternative fuel and is also
33 capable of operating on gasoline or diesel fuel.

34 (c) “Bi-fueled motor vehicle” means a motor vehicle fueled
35 from two or more tanks, each of which stores a separate type of

36 fuel, which has the ability to operate on an alternative fuel and
37 another form of fuel. “Bi-fueled motor vehicles” as here defined
38 are alternative-fuel motor vehicles.

39 (d) “Liquefied petroleum gas” means fuel commonly known
40 and designated as “liquefied petroleum gas” or “LP gas”. The
41 term “liquefied petroleum gas” also means and includes:

42 (1) Propane;

43 (2) Butane; or

44 (3) A mix of gases used as motor fuel which is
45 predominantly propane or butane, or predominantly a mixture of
46 propane and butane.

47 (e) “Plug-in hybrid electric vehicle” means:

48 (1) A plug-in hybrid electric vehicle manufactured by an
49 established motor vehicle manufacturer of plug-in hybrid electric
50 vehicles that can operate solely on electric power and that is
51 capable of recharging its battery from an on-board generation
52 source and an off-board electricity source; and

53 (2) A plug-in hybrid electric vehicle conversion that
54 provides an increase in city fuel economy of seventy-five percent
55 or more as compared to a comparable nonhybrid version vehicle
56 for a minimum of twenty miles and that is capable of recharging
57 its battery from an on-board generation source and an off-board
58 electricity source. A vehicle is comparable if it is the same
59 model year and the same vehicle class as established by the
60 United States Environmental Protection Agency and is
61 comparable in weight, size and use. Fuel economy comparisons
62 shall be made using city fuel economy standards in a manner that
63 is substantially similar to the manner in which city fuel economy
64 is measured in accordance with procedures set forth in 40 C. F.
65 R. 600 as in effect on January 1, 2011.

66 (f) “Qualified alternative-fuel vehicle refueling
67 infrastructure” means property owned by the applicant for the
68 tax credit and used for storing alternative fuels and for
69 dispensing such alternative fuels into fuel tanks of motor
70 vehicles, including, but not limited to, natural gas supply lines,
71 compression equipment, storage tanks and dispensing units for
72 alternative fuel at the point where the fuel is delivered into a
73 motor vehicle for consumption: *Provided*, That the property is
74 installed and located in this state and is not located in or on a
75 private residence or private home.

76 (g) “Qualified alternative-fuel vehicle home refueling
77 infrastructure” means property owned by the applicant for the
78 tax credit located on a private residence or private home and
79 used for storing alternative fuels and for dispensing such
80 alternative fuels into fuel tanks of motor vehicles, including, but
81 not limited to, compression equipment, storage tanks and
82 dispensing units for alternative fuel at the point where the fuel is
83 delivered or for providing electricity to plug-in hybrid electric
84 vehicles or electric vehicles: *Provided*, That the property is
85 installed and located in this state.

86 (h) “Taxpayer” means any natural person, corporation,
87 limited liability company or partnership subject to the tax
88 imposed under article twenty-one, article twenty-three or article
89 twenty-four of this chapter or any combination thereof.

**§11-6D-3. Credit allowed for alternative-fuel motor vehicles and
qualified alternative-fuel vehicle refueling
infrastructure; application against personal income
tax, business franchise tax or corporate net income
tax; effective date.**

1 The tax credits for the purchase of alternative-fuel motor
2 vehicles or conversion to alternative-fuel motor vehicles,
3 qualified alternative-fuel vehicle refueling infrastructure and

4 qualified alternative-fuel vehicle home refueling infrastructure
5 provided in this article may be applied against the tax liability of
6 a taxpayer imposed by the provisions of either article
7 twenty-one, article twenty-three or article twenty-four of this
8 chapter, but in no case may more than one tax credit be granted
9 under this article or any combination of articles set forth in this
10 chapter for purchase of an alternative-fuel motor vehicle or for
11 costs relating to conversion to an alternative-fuel motor vehicle,
12 or for costs associated with alternative-fuel vehicle refueling
13 infrastructure or for costs associated with alternative-fuel home
14 refueling infrastructure as defined in this article. This credit shall
15 be available for those tax years beginning on or after January 1,
16 2011, but shall not be available for, or with relation to, any
17 purchase, expenditure, investment, installation, construction or
18 conversion made in any tax year beginning after the termination
19 dates specified in this article, as applicable to specified
20 purchases, expenditures, investments, installations, construction
21 or conversions.

§11-6D-4. Eligibility for credit.

1 A taxpayer is eligible to claim the credit against tax provided
2 in this article if the taxpayer:

3 (a) Converts a motor vehicle that is presently registered in
4 West Virginia to operate exclusively on an alternative fuel as
5 defined in this article or to operate as a bi-fueled alternative-fuel
6 motor vehicle; or

7 (b) Purchases from an original equipment manufacturer or
8 an after-market conversion facility or any other automobile
9 retailer, a new dedicated alternative-fuel motor vehicle or
10 bi-fueled alternative-fuel motor vehicle for which the taxpayer
11 then obtains a valid West Virginia registration; or

12 (c) Constructs or purchases and installs qualified alternative-
13 fuel vehicle refueling infrastructure that is capable of dispensing
14 alternative fuel for alternative-fuel motor vehicles.

15 (d) (1) The credit provided in this article is not available to
16 and may not be claimed by any taxpayer under any obligation
17 pursuant to any federal or state law, policy or regulation to
18 convert to the use of alternative fuels for any motor vehicle.

19 (2) The credit provided in this article is not available to and
20 may not be claimed by any taxpayer for construction or purchase
21 and installation of alternative-fuel vehicle home refueling
22 infrastructure on or after April 15, 2013.

23 (e) The credit provided in this article for purchase of an
24 alternative-fuel motor vehicle or conversion of a motor vehicle
25 to an alternative-fuel motor vehicle, is not available to and may
26 not be claimed by any taxpayer in, or for, any tax year in which
27 the taxpayer did not own the alternative-fuel motor vehicle for
28 which the claim is filed on the last day of the taxpayer's tax year
29 for which the credit is claimed.

30 (f) *Effective date.* –

31 The amendments to this article enacted in the 2013 Regular
32 Legislative Session shall be effective upon passage.

§11-6D-5. Amount of credit for alternative-fuel motor vehicles.

1 (a) For taxable years beginning on and after January 1, 2011,
2 but prior to termination or cessation of this credit as specified in
3 this article, the amount of the credit allowed under this article for
4 an alternative-fuel motor vehicle that weighs less than twenty-six
5 thousand pounds is thirty-five percent of the purchase price of
6 the alternative-fuel motor vehicle up to a maximum amount of
7 \$7,500 or fifty percent of the actual cost of converting from a
8 traditionally fueled motor vehicle to an alternative-fuel motor
9 vehicle up to a maximum amount of \$7,500.

10 (b) For taxable years beginning on and after January 1, 2011,
11 but prior to termination or cessation of this credit as specified in

12 this article, the amount of the credit allowed under this article for
13 an alternative-fuel motor vehicle that weighs more than
14 twenty-six thousand pounds is thirty-five percent of the purchase
15 price of the alternative-fuel motor vehicle up to a maximum
16 amount of \$25,000 or fifty percent of the actual cost of
17 converting from a traditionally fueled motor vehicle to an
18 alternative-fuel motor vehicle up to a maximum amount of
19 \$25,000.

**§11-6D-6. Amount of credit for qualified alternative-fuel vehicle
refueling infrastructure.**

1 (a) For taxable years beginning on and after January 1, 2011,
2 but prior to January 1, 2014, the amount of the credit allowed
3 under this article for qualified alternative-fuel vehicle refueling
4 infrastructure is equal to fifty percent of the total costs directly
5 associated with the construction or purchase and installation of
6 the alternative-fuel vehicle refueling infrastructure up to a
7 maximum of \$250,000; *Provided*, That if the qualified
8 alternative-fuel vehicle refueling infrastructure is generally
9 accessible for public use, the amount of the credit allowed will
10 be multiplied by 1.25 and the maximum amount allowable will
11 be \$312,500. The amount of credit allowed may not exceed the
12 cost of construction of the alternative-fuel vehicle refueling
13 infrastructure.

14 (b) For taxable years beginning on and after January 1, 2014,
15 but prior to termination or cessation of this credit as specified in
16 this article, the amount of the credit allowed under this article for
17 qualified alternative-fuel vehicle refueling infrastructure is equal
18 to twenty percent per facility of the total costs directly associated
19 with the construction or purchase and installation of the
20 alternative-fuel vehicle refueling infrastructure up to a maximum
21 of \$400,000 per facility.

22 (c) The cost of construction of the alternative-fuel vehicle
23 refueling infrastructure or alternative-fuel vehicle home

24 refueling infrastructure eligible for a tax credit under this article
25 does not include costs associated with exploration, development
26 or production activities necessary for severing natural resources
27 from the soil or ground.

28 (d) When the taxpayer is a pass-through entity treated like a
29 partnership for federal and state income tax purposes, the credit
30 allowed under this article for the year shall flow through to the
31 equity owners of the pass-through entity in any manner that such
32 equity owners see fit and is not required to flow through such
33 equity owners in the same manner as distributive share flows
34 through to the equity owners and in accordance with any
35 legislative rule the Tax Commissioner may propose for
36 legislative approval in accordance with article three, chapter
37 twenty-nine-a of this code to administer this section.

38 (e) No credit allowed by this article may be applied against
39 employer withholding taxes imposed by article twenty-one of
40 this chapter.

§11-6D-7. Duration of availability of credit.

1 No person is eligible to receive a tax credit under this article
2 for:

3 (1) An alternative-fuel motor vehicle purchased after
4 December 31, 2017;

5 (2) A vehicle converted to an alternative-fuel motor vehicle
6 after December 31, 2017;

7 (3) The construction or purchase and installation of qualified
8 alternative-fuel vehicle refueling infrastructure occurring after
9 December 31, 2017;

10 (4) The construction or purchase and installation of qualified
11 alternative-fuel vehicle home refueling infrastructure occurring
12 on or after April 15, 2013;

13 (5) Purchases of motor vehicles that operate on fuels other
14 than compressed natural gas, liquefied natural gas or liquefied
15 petroleum gas, occurring on or after April 15, 2013; or

16 (6) Conversions of motor vehicles to operate on fuels other
17 than compressed natural gas, liquefied natural gas or liquefied
18 petroleum gas, occurring on or after April 15, 2013.

§11-6D-9. Carryover credit allowed; recapture of credit.

1 (a) If the alternative-fuel motor vehicle tax credit allowed
2 under this article in the first taxable year in which the tax credit
3 is allowable to offset tax exceeds the taxpayer's tax liability as
4 determined in accordance with article twenty-one, article
5 twenty-three and article twenty-four of this chapter for that
6 taxable year, the excess may be applied for not more than the
7 four next succeeding taxable years until the excess tax credit is
8 used or the end of the fourth next succeeding taxable year,
9 whichever occurs first. Any excess credit remaining at the end
10 of the fourth next succeeding taxable year shall be forfeited.

11 (b) If the qualified alternative-fuel vehicle refueling
12 infrastructure tax credit allowed under this article in any taxable
13 year exceeds the taxpayer's tax liability as determined in
14 accordance with article twenty-one, article twenty-three or
15 article twenty-four of this chapter for that taxable year, the
16 excess may be applied for succeeding taxable years until the full
17 amount of the excess tax credit is used.

18 (c) No carryback to a prior taxable year is allowed for the
19 amount of any unused credit in any taxable year.

20 (d) A tax credit is subject to recapture, elimination or
21 reduction if it is determined by the State Tax Commissioner that
22 a taxpayer was not entitled to the credit, in whole or in part, in
23 the tax year in which it was claimed by the taxpayer. The amount
24 of credit that flows through to equity owners of a pass-through

25 entity may be recaptured or recovered from either the taxpayer
26 or the equity owners in the discretion of the Tax Commissioner.

27 (e) The tax credit allowed under this article may not be sold,
28 transferred or assigned to any person or entity. The tax credit
29 allowed under this article does not attach to or follow the
30 qualified motor vehicle or qualified infrastructure upon sale,
31 resale, transfer, assignment or any other change of ownership of
32 such vehicle or infrastructure. Credit shall not be available to any
33 successor owner of any qualified motor vehicle or any qualified
34 infrastructure property for which the credit was available to the
35 original owner or predecessor owner.

CHAPTER 185

**(Com Sub. for S. B. 440 - By Senators Prezioso,
Facemire, Stollings and Plymale)**

[Passed April 11, 2013; in effect from passage.]

[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §11-10-5s of the Code of West Virginia, 1931, as amended, relating to disclosure of confidential taxpayer information; authorizing the disclosure of specified tax information by the Tax Commissioner to the Attorney General; authorizing the disclosure of specified tax information by the Attorney General to specified persons relevant to enforcement of Tobacco Master Settlement Agreement; authorizing the Tax Commissioner to enter into a written agreement with the State Auditor for disclosure of confidential tax information to the State Auditor to facilitate the State Auditor's participation in federal and state offset programs to collect unpaid taxes; and providing for protection and limited use of confidential information.

Be it enacted by the Legislature of West Virginia:

That §11-10-5s of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. WEST VIRGINIA TAX AND PROCEDURE
ADMINISTRATION ACT.**

§11-10-5s. Disclosure of certain taxpayer information.

1 (a) *Purpose.* – The Legislature hereby recognizes the
2 importance of confidentiality of taxpayer information as a
3 protection of taxpayers' privacy rights and to enhance voluntary
4 compliance with the tax law. The Legislature also recognizes the
5 citizens' right to accountable and efficient state government. To
6 accomplish these ends, the Legislature hereby creates certain
7 exceptions to the general principle of confidentiality of taxpayer
8 information.

9 (b) *Exceptions to confidentiality.* –

10 (1) Notwithstanding any provision in this code to the
11 contrary, the Tax Commissioner shall publish in the State
12 Register the name and address of every taxpayer and the amount,
13 by category, of any credit asserted on a tax return under articles
14 thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-q,
15 thirteen-r and thirteen-s of this chapter and article one, chapter
16 five-e of this code. The categories by dollar amount of credit
17 received are as follows:

18 (A) More than \$1 but not more than \$50,000;

19 (B) More than \$50,000 but not more than \$100,000;

20 (C) More than \$100,000 but not more than \$250,000;

21 (D) More than \$250,000 but not more than \$500,000;

22 (E) More than \$500,000 but not more than \$ 1 million; and

23 (F) More than \$1 million.

24 (2) Notwithstanding any provision in this code to the
25 contrary, the Tax Commissioner shall publish in the State
26 Register the following information regarding a compromise of
27 a pending civil tax case that occurs on or after the effective date
28 of this section in which the Tax Commissioner is required to
29 seek the written recommendation of the Attorney General and
30 the Attorney General has not recommended acceptance of the
31 compromise or when the Tax Commissioner compromises a civil
32 tax case for an amount that is more than \$250,000 less than the
33 assessment of tax owed made by the Tax Commissioner:

34 (A) The names and addresses of taxpayers that are parties to
35 the compromise;

36 (B) A summary of the compromise;

37 (C) Any written advice or recommendation rendered by the
38 Attorney General regarding the compromise; and

39 (D) Any written advice or recommendation rendered by the
40 Tax Commissioner's staff.

41 Under no circumstances may the tax return of the taxpayer
42 or any other information which would otherwise be confidential
43 under other provisions of law be disclosed pursuant to the
44 provisions of this subsection.

45 (3) Notwithstanding any provision in this code to the
46 contrary, the Tax Commissioner may disclose any relevant
47 return information to the prosecuting attorney for the county in
48 which venue lies for a criminal tax offense when there is
49 reasonable cause, based upon and substantiated by the return
50 information, to believe that a criminal tax law has been or is
51 being violated.

52 (4) Notwithstanding any provision in this code to the
53 contrary, the Tax Commissioner may enter into written exchange
54 of information agreements with the commissioners of Labor,
55 Employment Security, Alcohol Beverage Control and Workers'
56 Compensation to disclose and receive timely return information.
57 The Tax Commissioner may promulgate rules pursuant to
58 chapter twenty-nine-a of this code regarding additional agencies
59 with which written exchange of information agreements may be
60 sought but may not promulgate emergency rules regarding these
61 additional agencies. The agreements shall be published in the
62 State Register and are only for the purpose of facilitating
63 premium collection, tax collection and facilitating licensure
64 requirements directly enforced, administered or collected by the
65 respective agencies. The provisions of this subsection do not
66 preclude or limit disclosure of tax information authorized by
67 other provisions of this code. Confidential return information so
68 disclosed remains confidential in the other agency to the extent
69 provided by section five-d of this article and by other applicable
70 federal or state laws.

71 (5) Notwithstanding any provision of this code to the
72 contrary, the Tax Commissioner may enter into a written
73 agreement with the State Treasurer to disclose to the State
74 Treasurer the following business registration information:

75 (A) The names, addresses and federal employer
76 identification numbers of businesses which have registered to do
77 business in West Virginia; and

78 (B) The type of business activity and organization of those
79 businesses.

80 Disclosure of this information shall begin as soon as
81 practicable after the effective date of this subsection and may be
82 used only for the purpose of recovery and disposition of
83 unclaimed property in accordance with the provisions of article

84 eight, chapter thirty-six of this code. The provisions of this
85 subsection do not preclude or limit disclosure of tax information
86 authorized by other provisions of this code. Confidential return
87 information disclosed hereunder or thereunder remains
88 confidential as provided by section five-d of this article and by
89 other applicable federal or state laws.

90 (6) Notwithstanding any provision of this code to the
91 contrary, the Tax Commissioner may disclose to the Attorney
92 General any tax return, report, declaration or tax return
93 information, including the identity of a taxpayer, that relates to
94 any taxpayer's sales of tobacco products subject to state excise
95 tax or to such sales of tobacco products that were manufactured
96 or imported by a nonparticipating manufacturer as defined in
97 section two, article nine-d of chapter sixteen of this code, for the
98 purpose of enforcement of articles nine-b and nine-d, chapter
99 sixteen of this code, or for the purpose of representing the State
100 of West Virginia in any arbitration or litigation arising under the
101 Tobacco Master Settlement Agreement or articles nine-b and
102 nine-d, chapter sixteen of this code. Nothing herein shall
103 authorize the disclosure of any taxpayer's income tax returns or
104 business franchise tax returns, or authorize the use of the
105 disclosed information for any purpose other than as specified
106 herein.

107 (7) Notwithstanding any provision of this code to the
108 contrary, the Attorney General, upon the consent of the Tax
109 Commissioner, may disclose information provided by the Tax
110 Commissioner under the authority of subdivision six of this
111 subsection as follows:

112 (A) To a party or parties participating in arbitration or
113 litigation arising under the terms of the Tobacco Master
114 Settlement Agreement; or

115 (B) To a judge, arbitrator, administrative law judge, legal
116 counsel or other officer, official or participant in proceedings for

117 or relating to administration, implementation, enforcement,
118 defense or settlement and arbitration of the provisions of articles
119 nine-b and nine-d of chapter sixteen of this code.

120 (C) Notwithstanding any provision of this code to the
121 contrary, the Attorney General may introduce into evidence or
122 disclose the information in the arbitration or litigation
123 proceedings or an action for administration, implementation,
124 enforcement, defense or settlement and arbitration of the
125 provisions of articles nine-b and nine-d of chapter sixteen of this
126 code.

127 (D) This subdivision does not apply to a document, tax
128 return or other information subject to disclosure restrictions
129 imposed by federal statute or regulation.

130 (E) Any information disclosed pursuant to this subdivision
131 is subject to the following restrictions:

132 (i) specific identifiers shall first be redacted or otherwise
133 removed from any such information that was reported by a
134 taxpayer who is not a party to any proceeding, arbitration or
135 litigation;

136 (ii) No such disclosure shall be made unless it is subject to
137 a protective order or agreement restricting the use of the
138 disclosed information to such proceeding, arbitration or
139 litigation;

140 (F) For purposes of this section, "specific identifiers" shall
141 mean the name, address, telephone number, taxpayer
142 identification number, logo, trademark or other markings unique
143 to the taxpayer.

144 (8) Notwithstanding any provision of this code to the
145 contrary, the Tax Commissioner may enter into a written
146 exchange agreement with the Auditor to disclose certain
147 taxpayer information to facilitate participation in the following:

148 (A) The federal offset program authorized by section
149 thirty-seven, article one, chapter fourteen of this code; and

150 (B) The state offset program, as authorized by subsection
151 (h), section thirty-seven, article one, chapter fourteen of this
152 code, for the purpose of protecting return information as defined
153 in section five-d, article ten of this chapter and collecting debts,
154 fees and penalties due the state, its departments, agencies or
155 institutions.

156 (C) The taxpayer information exchanged or disclosed
157 pursuant to this subdivision is to be used only for the purpose of
158 facilitating the collection of unpaid and delinquent tax liabilities
159 through offset against state payments due and owing to
160 taxpayers, vendors and contractors providing goods or services
161 to the state, its departments, agencies or institutions.

162 (D) The Tax Commissioner may disclose the following
163 taxpayer information:

164 (i) Name;

165 (ii) Address;

166 (iii) Social Security number or tax identification number;

167 (iv) Amount of the tax liability; and

168 (v) Any other information required by the written agreement.

169 (E) Disclosure of this information begins as soon as
170 practicable after the effective date of this subdivision.

171 (F) The provisions of this section do not preclude or limit
172 disclosure of tax information authorized by other provisions of
173 this code. Any confidential return information disclosed
174 hereunder or thereunder remains confidential to the extent

175 provided by section five-d of this article and by other applicable
176 federal or state laws.

177 (c) *Tax expenditure reports.* – Beginning on January 15,
178 1992, and every January 15 thereafter, the Governor shall submit
179 to the President of the Senate and the Speaker of the House of
180 Delegates a tax expenditure report. This report shall expressly
181 identify all tax expenditures. Within three-year cycles, the
182 reports shall be considered together to analyze all tax
183 expenditures by describing the annual revenue loss and benefits
184 of the tax expenditure based upon information available to the
185 Tax Commissioner. For purposes of this section, the term "tax
186 expenditure" means a provision in the tax laws administered
187 under this article including, but not limited to, exclusions,
188 deductions, tax preferences, credits and deferrals designed to
189 encourage certain kinds of activities or to aid taxpayers in
190 special circumstances. The Tax Commissioner shall promulgate
191 rules setting forth the procedure by which he or she will compile
192 the reports and setting forth a priority for the order in which the
193 reports will be compiled according to type of tax expenditure.

194 (d) *Federal and state return information confidential.* –
195 Notwithstanding any other provisions of this section or of this
196 code, no return information made available to the Tax
197 Commissioner by the Internal Revenue Service or department or
198 agency of any other state may be disclosed to another person in
199 a manner inconsistent with the provisions of Section 6103 of the
200 Internal Revenue Code of 1986, as amended, or of the other
201 states' confidentiality laws.

CHAPTER 186

**(Com. Sub. for S. B. 445 - By Senators Prezioso, Macemire,
Stollings, Plymale, McCabe and Beach)**

[Passed April 11, 2013; in effect July 1, 2013.]

[Approved by the Governor on April 30, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-5bb, relating to the collection of taxes; requiring the Lottery Commission to offset certain lottery prizes against the state tax liabilities of the prize winner; providing limitations period; and authorizing an agreement between the Tax Department and the Lottery Commission for the purpose of establishing collection procedures.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-10-5bb, to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5bb. Applying lottery prizes to tax liabilities.

- 1 (a) *Offsetting lottery prizes against tax liabilities.* – Upon
- 2 notification by the State Tax Department that a person who is
- 3 entitled to all or part of a lottery prize is delinquent in the
- 4 payment of any of the taxes administered under chapter eleven,
- 5 article ten of this code, the Lottery Director shall forward to the
- 6 State Tax Department the prize or portion thereof to be
- 7 distributed directly from the State Lottery Office, and such
- 8 amount shall be applied to pay the tax liabilities of the prize

9 winner: *Provided*, That such distribution shall be subject to the
10 limitations on collection provided in section sixteen of this
11 article.

12 (b) *Administration.* - (1) The Tax Commissioner shall enter
13 into a written agreement with the Lottery Director for the
14 purpose of establishing a procedure for the collection of prizes
15 as set forth in subsection (a) of this section. The director shall
16 include in the agreement a method by which Lottery Director
17 will provide the names of lottery winners as expeditiously as
18 possible.

19 (2) Notwithstanding any provision in this code to the
20 contrary, the Tax Commissioner may disclose tax information to
21 the Lottery Director for the purpose of administering the
22 collection procedure authorized in subsection (a) of this section,
23 and the Tax Commissioner and Lottery Director may enter into
24 a written agreement allowing and providing for the disclosure of
25 tax information for the purpose of administering the collection
26 procedure authorized in subsection (a) of this section.

27 (c) *Effective date.* - The provisions of this section shall apply
28 to all tax years beginning after December 31, 2013.

CHAPTER 187

(Com. Sub. for H. B. 2913 - By Delegates White and Marcum)

[Passed April 12, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 30, 2013.]

AN ACT to amend Code of West Virginia, 1931, as amended by
adding thereto a new section, designated §11-10-26, relating to
correction of certain erroneous distributions, transfers, allocations,

overpayments or underpayments; specifying immunity of agencies, subdivisions and instrumentalities of this state from any fine, penalty, assessment or imposition as a result of, or attributable to the erroneous distribution, transfer, allocation, overpayment or underpayment of moneys; and specifying when discovery and distribution have occurred; specifying that provisions shall not be applied to alter, abrogate or terminate any current and ongoing agreement or arrangement in operation on the effective date.

Be it enacted by the Legislature of West Virginia:

That of the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-10-26, to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-26. Adjustments for correction or erroneous distribution of funds, limitation period, immunity of agencies, subdivisions, and instrumentalities of this state.

1 (a) (1) An erroneous distribution, transfer, allocation,
2 overpayment or underpayment dedicated, distributed or directed
3 by the state or an instrumentality of the state to a state or local
4 governmental subdivision or a fund, entity, agency or
5 instrumentality of the state or a political subdivision of the state,
6 under the provision of this code administered under this article,
7 or under the provisions of article twenty-two, twenty-two-a,
8 twenty-two-b, twenty-two-c or twenty-five, chapter twenty-nine
9 of this code, or any other provision of this code, or any
10 combination thereof, caused by clerical error or mistake, or a
11 computational, information or other mistake or error, may be
12 corrected by an adjustment to a distribution, transfer, allocation
13 or payment to the subdivision, entity, agency, instrumentality or
14 fund and by transfer of moneys from the subdivision, entity,
15 agency, instrumentality or fund until the amount of the erroneous

16 distribution, transfer, allocation, overpayment or underpayment
17 has been corrected: *Provided*, That no correction or adjustment
18 may be made for an erroneous distribution, transfer, allocation,
19 overpayment or underpayment of moneys that is first discovered
20 by the distributor or the distributee more than three years after
21 the date on which the erroneous distribution, transfer, allocation,
22 overpayment or underpayment of moneys was made, and no
23 action lies for collection, correction or remediation of the late
24 discovered erroneous distribution, transfer, allocation, over-
25 payment or underpayment of the moneys.

26 (2) A distribution, transfer, allocation, overpayment or
27 underpayment of moneys is deemed to have been made on the
28 date when the moneys related thereto are under the actual,
29 substantive control of the transferee, and subject to expenditure,
30 disbursement, consumption or disposition by the transferee.

31 (3) An erroneous distribution, transfer, allocation, over-
32 payment or underpayment of moneys is deemed to have been
33 discovered on the date when the distributor or the distributee or
34 any employee, officer, agent or representative of the distributor
35 or distributee has actual substantive knowledge of the erroneous
36 distribution, transfer, allocation, overpayment or underpayment
37 of moneys.

38 (b) An agency, governmental subdivision or instrumentality
39 of this state is not subject to a fine, penalty, assessment or
40 imposition as a result of, or attributable to, an erroneous
41 distribution, transfer, allocation, overpayment or underpayment
42 of moneys.

43 (c) The provision of subsection (a) of this section shall not
44 be applied to alter, abrogate or terminate any current and
45 ongoing agreement or arrangement which was in operation on
46 the effective date of this section, to correct or adjust an
47 erroneous distribution, transfer, allocation, overpayment or
48 underpayment, between (1) this state or an instrumentality of this

49 state and (2) a state or local governmental subdivision or a fund,
50 entity, agency or instrumentality of the state or a political
51 subdivision of this state.

CHAPTER 188

(Com. Sub. for S. B. 638 - By Senators Prezioso and Plymale)

[Passed April 8, 2013; in effect July 1, 2013.]
[Approved by the Governor on April 18, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13A-22, relating to exemptions from the tax on the privilege of severing natural gas and oil; terminating a severance tax exemption for natural gas or oil produced from any horizontally drilled well that has not produced marketable quantities for five consecutive years immediately preceding the year in which such well is placed back into production and thereafter produces marketable quantities of natural gas or oil; providing an exception thereto; and specifying a controlling effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-13A-22, to read as follows:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-22. Termination of exemption.

1 (a) On and after July 1, 2013, the exemption set forth in
2 subdivision (4), subsection (a), section three-a of this article is
3 void and of no force or effect with respect only to horizontally

4 drilled wells. However, if a well for which the producer
5 established entitlement to that exemption on or before June 30,
6 2013, the exemption from tax continues for natural gas or oil
7 produced from that well for the remainder of the ten-year period
8 for which the exemption was originally applicable.

9 (b) "Horizontally drilled well" means any well that is drilled
10 using a "horizontal drilling" method as that term is defined in
11 subdivision (5), subsection (b), section four, article six-a, chapter
12 twenty-two of this code.

13 (c) Pursuant to section five-p, article ten of this chapter,
14 termination of the exemption set forth in subdivision (4),
15 subsection (a), section three-a of this article on and after July 1,
16 2013, is subject to the controlling internal effective date of this
17 section and is not subject to the alternative effective date
18 provisions of section five-p, article ten of this chapter.

CHAPTER 189

**(H. B. 3043 - By Mr. Speaker, (Mr. Thompson)
and Delegates Craig, Hunt, Marcum, Caputo, Ferro,
R. Phillips, Williams and Boggs)**

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §11-13BB-3 of the Code of West Virginia, 1931, as amended, relating to including methane monitoring equipment as eligible safety equipment for tax credit purposes.

Be it enacted by the Legislature of West Virginia:

That § 11-13BB-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 13BB. WEST VIRGINIA INNOVATIVE MINE
SAFETY TECHNOLOGY TAX
CREDIT ACT.**

§11-13BB-3. Definitions.

1 (a) Any term used in this article has the meaning ascribed by
2 this section unless a different meaning is clearly required by the
3 context of its use or by definition in this article.

4 (b) For purposes of this article, the term:

5 (1) "Certified eligible safety property" means eligible safety
6 property in which an eligible taxpayer has made qualified
7 investment for which credit has been certified under this article.

8 (2) "Coal mining company" means:

9 (A) A person subject to tax imposed on the severance of coal
10 by section three, article thirteen-a of this chapter; or

11 (B) A person working as a contract miner of coal, mining
12 coal in this state, under contract with a person subject to tax
13 imposed on the severance of coal by section three, article
14 thirteen-a of this chapter.

15 (3) "Director" means the Director of the Office of Miners'
16 Health, Safety and Training or West Virginia Office of Miners'
17 Health, Safety and Training established under article one,
18 chapter twenty two-a of this code.

19 (4) "Eligible safety property" means safety technology
20 equipment that, at the time of acquisition, is on the list of
21 approved innovative mine safety technology: *Provided*, That
22 eligible safety property includes machine mounted methane
23 monitors required by section forty-three, article two, chapter
24 twenty-two-a of this code.

25 (5) "Eligible taxpayer" means a coal mining company that
26 purchases eligible safety property.

27 (6) "List of approved innovative mine safety technology"
28 means the list required to be compiled and maintained by the
29 Mine Safety Technology Task Force and approved and published
30 by the director under this article.

31 (7) "Office of Miners' Health, Safety and Training" or
32 "West Virginia Office of Miners' Health, Safety and Training"
33 means the Office of Miners' Health, Safety and Training
34 established under article one, chapter twenty two-a of this code.

35 (8) "Person" includes any corporation, limited liability
36 company or partnership.

37 (9) "Qualified investment" means the eligible taxpayer's
38 investment in eligible safety property pursuant to a qualified
39 purchase as qualified and limited by section six of this article.

40 (10) "Qualified purchase" means and includes only
41 acquisitions of eligible safety property for use in this state.

42 (A) A lease of eligible safety property may constitute a
43 qualified purchase if the lease was entered into and became
44 effective at a time when the equipment is on the list of approved
45 innovative mine safety technology and if the primary term of the
46 lease for the eligible safety property is five years or more. Leases
47 having a primary term of less than five years do not qualify.

48 (B) "Qualified purchase" does not include:

49 (i) Purchases or leases of realty or any cost for, or related to,
50 the construction of a building, facility or structure attached to
51 realty;

52 (ii) Purchases or leases of property not exclusively used in
53 West Virginia;

54 (iii) Repair costs including materials used in the repair
55 unless, for federal income tax purposes, the cost of the repair
56 must be capitalized and not expensed;

57 (iv) Motor vehicles licensed by the Division of Motor
58 Vehicles;

- 59 (v) Clothing;
- 60 (vi) Airplanes;
- 61 (vii) Off-premises transportation equipment;
- 62 (viii) Leases of tangible personal property having a primary
63 term of less than five years;
- 64 (ix) Property that is used outside this state; and
- 65 (x) Property that is acquired incident to the purchase of the
66 stock or assets of an industrial taxpayer that was or had been
67 used by the seller in his or her industrial business in this state or
68 in which investment was previously the basis of a credit against
69 tax taken under any other article of this chapter.
- 70 (C) Acquisitions, including leases, of eligible safety property
71 may constitute qualified purchases for purposes of this article
72 only if:
- 73 (i) The property is not acquired from a person whose
74 relationship to the person acquiring it would result in the
75 disallowance of deductions under Section 267 or 707(b) of the
76 United States Internal Revenue Code of 1986, as amended;
- 77 (ii) The property is not acquired from a related person or by
78 one component member of a controlled group from another
79 component member of the same controlled group but the Tax
80 Commissioner may waive this requirement if the property was
81 acquired from a related party for its then fair market value; and
- 82 (iii) The basis of the property for federal income tax
83 purposes, in the hands of the person acquiring it, is not
84 determined, in whole or in part, by reference to the federal
85 adjusted basis of the property in the hands of the person from
86 whom it was acquired or under Section 1014(e) of the United
87 States Internal Revenue Code of 1986, as amended.
- 88 (11) "Safety technology" means depreciable tangible
89 personal property and equipment, other than clothing, principally
90 designed to directly minimize workplace injuries and fatalities
91 in coal mines.

92 (12) "Taxpayer" means a person subject to any of the taxes
93 imposed by article thirteen-a, twenty-three or twenty-four of this
94 chapter.

CHAPTER 190

(Com. Sub. for H. B. 2514 - By Mr. Speaker, (Mr. Thompson)
and Delegate Armstead)
[By Request of the Executive]

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §11-13X-5 of the Code of West Virginia, 1931, as amended, relating to lowering the total amount of tax credits available in a given fiscal year under the Film Industry Investment Act.

Be it enacted by the Legislature of West Virginia:

That § 11-13X-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT.

§11-13X-5. Amount of credit allowed; limitation of the credits.

2 (a) *Base allowance.* —

3 The amount of credit allowed to every eligible company,
4 except as provided in subsection (b) of this section, is twenty-
5 seven percent.

6 (b) *Extra allowance for hiring of local workers.* — Any
7 amount allowed in subsection (a) of this section shall be
8 increased by an additional four percent if the eligible company,

9 or its authorized payroll service company, employs ten or more
10 West Virginia residents as part of its full-time employees
11 working in the state or as apprentices working in the state.

12 (c) *Application of the credits.* — The tax credit allowed
13 under this section shall be applied to the eligible company's state
14 tax liability as provided in section seven of this article.

15 (d) *Limitation of the credits.* — No more than \$5 million of
16 the tax credits may be allocated by the film office in any given
17 West Virginia state fiscal year. The film office shall allocate the
18 tax credits in the order the applications therefor are received.

CHAPTER 191

(S. B. 446 - By Senators Prezioso, Facemire and Beach)

[Passed April 12, 2013; in effect July 1, 2013.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §11-14B-14 of the Code of West Virginia, 1931, as amended, relating to conformity with the International Fuel Tax Agreement; and specifying that on and after July 1, 2013, specified provisions of the International Fuel Tax Agreement, as amended and in effect on that date, apply to motor fuel taxes collected under the International Fuel Tax Agreement.

Be it enacted by the Legislature of West Virginia:

That §11-14B-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14B. INTERNATIONAL FUEL TAX AGREEMENT.

§11-14B-14. General procedure and administration; conformity with agreement.

1 (a) All of the provisions of the West Virginia Tax Procedure
2 and Administration Act set forth in article ten of this chapter,
3 including amendments thereto, apply to motor fuel taxes
4 collected under an International Fuel Tax Agreement.

5 (b) In the event of any inconsistency between the provisions
6 of article ten of this chapter and the terms of the International
7 Fuel Tax Agreement, the terms of said article ten control.

8 (c) Notwithstanding the provisions of subsections (a) and (b)
9 of this section, on and after July 1, 2013, the provisions of
10 section RI230 of the International Fuel Tax Agreement, as
11 amended and in effect on that date, apply to motor fuel taxes
12 collected under the International Fuel Tax Agreement.

CHAPTER 192

(Com. Sub. for S. B. 454 - By Senators Prezioso and Facemire)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §11-14C-2, §11-14C-5, §11-14C-9, §11-14C-10, §11-14C-13 and §11-14C-19 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-14C-6a; to amend and reenact §11-15-18b of said code; and to amend and reenact §11-15A-13a of said code, all relating to the taxation of alternative fuel; defining terms; requiring the Tax Commissioner to determine the gasoline gallon equivalent for alternative fuels; imposing tax on motor fuel equivalent gallons; specifying the point of imposition of tax on alternative fuels not otherwise taxed at the point of imposition; providing that propane used in a motor vehicle is subject to the tax; requiring alternative-fuel bulk end users, providers of alternative

fuels and retailers of alternative fuels to be licensed; establishing bonding requirements for alternative-fuel bulk end users, providers of alternative fuels and retailers of alternative fuels; establishing due dates for returns and payments of tax on alternative fuels; and specifying effective dates for amendments.

Be it enacted by the Legislature of West Virginia:

That §11-14C-2, §11-14C-5, §11-14C-9, §11-14C-10, §11-14C-13 and §11-14C-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-14C-6a; that §11-15-18b of said code be amended and reenacted; and that §11-15A-13a of said code be amended and reenacted, all to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

PART I. GENERAL PROVISIONS.

§11-14C-2. Definitions.

1 As used in this article and unless the context requires
2 otherwise, the following terms have the meaning ascribed herein.

3 (I) "Agricultural purposes" means the activities of:

4 (A) Cultivating the soil, including the planting and
5 harvesting of crops, for the commercial production of food, fiber
6 and ornamental woodland products;

7 (B) Using land for breeding and management of farm
8 livestock including dairy, apiary, equine or poultry husbandry;
9 and

10 (C) Using land for the practice of horticulture including the
11 growing of Christmas trees, orchards and nursery stock.
12 Agricultural purposes do not include commercial forestry,

13 growing of timber for commercial purposes or other activity that
14 normally would not be included in subdivision (A), (B) or (C) of
15 this definition.

16 (2) "Aircraft" includes any airplane or helicopter.

17 (3) "Alcohol" means motor fuel-grade ethanol or a mixture
18 of motor fuel-grade ethanol and methanol, excluding denaturant
19 and water that is a minimum of ninety-eight percent ethanol or
20 methanol by volume.

21 (4) "Alternative fuel" means a combustible gas or liquid that
22 is used or suitable for use as a motor fuel in an internal
23 combustion engine or motor to propel or operate any form of
24 vehicle, machine or mechanical contrivance and includes, but is
25 not limited to, products commonly known as butane, propane,
26 compressed natural gas, liquefied natural gas, liquefied
27 petroleum gas, natural gas hydrocarbons and derivatives, liquid
28 hydrocarbons derived from biomass, P-series fuels and
29 hydrogen. "Alternative fuel" does not include diesel fuel,
30 gasoline, blended fuel, aviation fuel or any special fuel. For
31 purposes of this article electricity is not an alternative fuel.

32 (5) "Alternative-fuel bulk end user" means a person who
33 maintains storage facilities for alternative fuel and uses part or
34 all of the stored fuel to operate a motor vehicle.

35 (6) "Alternative-fuel commercial refueling infrastructure"
36 means property owned by a commercial establishment and used
37 for storing alternative fuels and for dispensing such alternative
38 fuels into the fuel tanks of vehicles owned by the same person or
39 entity that owns the alternative-fuel commercial refueling
40 infrastructure or into the fuel tanks of privately owned vehicles
41 or commercial vehicles other than those owned by the same
42 person or entity that owns the alternative-fuel commercial
43 refueling infrastructure, or any combination thereof.

44 “Alternative-fuel vehicle commercial refueling infrastructure”
45 includes, but is not limited to, compression equipment, storage
46 tanks and dispensing units for alternative fuel at the point where
47 the fuel is delivered: *Provided*, That the property is not located
48 on a private residence or private home. “Alternative-fuel
49 commercial refueling infrastructure” does not include any
50 building, infrastructure, equipment, apparatus, terminal or
51 connections for servicing, charging or providing electricity to
52 plug-in hybrid electric vehicles or electric vehicles. “Alternative-
53 fuel vehicle commercial refueling infrastructure” includes
54 alternative-fuel vehicle commercial refueling infrastructure
55 property as described in this subdivision which is owned by a
56 lessor or landlord and leased to or rented to a lessee or tenant as
57 part of a residence for such lessee or tenant.

58 (7) “Alternative-fuel home refueling infrastructure” means
59 property owned by a private individual for personal use that is
60 located at the individual’s private residence or private home and
61 used for storing and dispensing alternative fuels into fuel tanks
62 of the property owner’s motor vehicles. This includes, but is not
63 limited to, compression equipment, storage tanks and dispensing
64 units for alternative fuel at the point where the fuel is delivered.
65 For purposes of this article, “alternative-fuel home refueling
66 infrastructure” does not include any building, infrastructure,
67 equipment, apparatus, terminal or connections for servicing,
68 charging or providing electricity to plug-in hybrid electric
69 vehicles or electric vehicles. “Alternative-fuel home refueling
70 infrastructure” does not include alternative-fuel vehicle refueling
71 infrastructure property owned by a lessor or landlord which is
72 leased to or rented to a lessee or tenant as part of a residence for
73 such lessee or tenant.

74 (8) “Article” or “this article” means article fourteen-c,
75 chapter eleven of this code.

76 (9) “Assessment” means a written determination by the
77 commissioner of the amount of taxes owed by a taxpayer.

78 (10) "Aviation fuel" means aviation gasoline or aviation jet
79 fuel.

80 (11) "Aviation gasoline" means motor fuel designed for use
81 in the operation of aircraft other than jet aircraft and sold or used
82 for that purpose.

83 (12) "Aviation jet fuel" means motor fuel designed for use
84 in the operation of jet or turbo-prop aircraft and sold or used for
85 that purpose.

86 (13) "Biodiesel fuel" means motor fuel or mixture of motor
87 fuels that is derived, in whole or in part, from agricultural
88 products or animal fats, or the wastes of such products or fats,
89 and is advertised as, offered for sale as, suitable for use or used
90 as motor fuel in an internal combustion engine.

91 (14) "Blended fuel" means a mixture composed of gasoline
92 or diesel fuel and another liquid including, but not limited to,
93 gasoline blend stocks, gasohol, ethanol, methanol, fuel-grade
94 alcohol, diesel fuel enhancers and resulting blends, other than a
95 de minimus amount of a product such as carburetor detergent or
96 oxidation inhibitor, that can be used as a motor fuel in a highway
97 vehicle.

98 (15) "Blender" means a person who produces blended motor
99 fuel outside the bulk transfer/terminal system.

100 (16) "Blending" means the mixing of one or more petroleum
101 products, with or without another product, regardless of the
102 original character of the product blended, if the product obtained
103 by the blending is capable of use in the generation of power for
104 the propulsion of a motor vehicle, an airplane or a marine vessel.
105 Blending does not include mixing that occurs in the process of
106 refining by the original refiner of crude petroleum or the
107 blending of products known as lubricating oil in the production
108 of lubricating oils and greases.

109 (17) “Bulk plant” means a motor fuel storage and
110 distribution facility that is not a terminal and from which motor
111 fuel may be removed at a rack.

112 (18) “Bulk transfer” means any transfer of motor fuel from
113 one location to another by pipeline tender or marine delivery
114 within a bulk transfer/terminal system, including, but not limited to
115 to, all of the following:

116 (A) Movement of motor fuel from a refinery or terminal to
117 a terminal by a marine vessel;

118 (B) Pipeline movements of motor fuel from a refinery or
119 terminal to a terminal;

120 (C) Book transfer of motor fuel within a terminal between
121 licensed suppliers prior to completion of removal across the
122 rack; and

123 (D) Two-party exchange between licensed suppliers or
124 between licensed suppliers and permissive suppliers.

125 (19) “Bulk user” means a person who maintains storage
126 facilities for motor fuel and uses part or all of the stored motor
127 fuel to operate a motor vehicle, watercraft or aircraft.

128 (20) “Bulk transfer/terminal system” means the motor fuel
129 distribution system consisting of refineries, pipelines, marine
130 vessels and terminals. Motor fuel in a refinery, a pipeline, a
131 terminal or a marine vessel transporting motor fuel to a refinery
132 or terminal is in the bulk transfer/terminal system. Motor fuel in
133 a motor fuel storage facility including, but not limited to, a bulk
134 plant that is not part of a refinery or terminal, in the motor fuel
135 supply tank of an engine or motor vehicle, in a marine vessel
136 transporting motor fuel to a motor fuel storage facility that is not
137 in the bulk transfer/terminal system, or in a tank car, rail car,
138 trailer, truck or other equipment suitable for ground
139 transportation is not in the bulk transfer/terminal system.

140 (21) "Carrier" means an operator of a pipeline or marine
141 vessel engaged in the business of transporting motor fuel above
142 the terminal rack.

143 (22) "Code" means the Code of West Virginia, 1931, as
144 amended.

145 (23) "Commercial watercraft" means a watercraft employed
146 in the business of commercial fishing, transporting persons or
147 property for compensation or hire or other trade or business.

148 (24) "Commissioner" or "Tax Commissioner" means the
149 West Virginia State Tax Commissioner or his or her delegate.

150 (25) "Compressed natural gas" means natural gas that has
151 been compressed and dispensed into motor fuel storage
152 containers and is advertised as, offered for sale as, suitable for
153 use as or used as an engine motor fuel.

154 (26) "Corporate or partnership officer" means an officer or
155 director of a corporation, partner of a partnership or member of
156 a limited liability company who as an officer, director, partner
157 or member is under a duty to perform on behalf of the
158 corporation, partnership or limited liability company, the tax
159 collection, accounting or remitting obligations.

160 (27) "Dead storage" is the amount of motor fuel that cannot
161 be pumped out of a motor fuel storage tank because the motor
162 fuel is below the mouth of the draw pipe. The amount of motor
163 fuel in dead storage is two hundred gallons for a tank with a
164 capacity of less than ten thousand gallons and four hundred
165 gallons for a tank with a capacity of ten thousand gallons or
166 more.

167 (28) "Denaturants" means and includes gasoline, natural
168 gasoline, gasoline components or toxic or noxious materials
169 added to motor fuel-grade ethanol to make it unsuitable for
170 beverage use but not unsuitable for automotive use.

171 (29) “Designated inspection site” means a state highway
172 inspection station, weigh station, agricultural inspection station,
173 mobile station or other location designated by the commissioner
174 to be used as a motor fuel inspection site.

175 (30) “Destination state” means the state, territory or foreign
176 country to which motor fuel is directed for delivery into a
177 storage facility, a receptacle, a container or a type of
178 transportation equipment for the purpose of resale or use. The
179 term does not include a tribal reservation of a recognized Native
180 American tribe.

181 (31) “Diesel fuel” means a liquid that is advertised as,
182 offered for sale as, sold for use as, suitable for use as or used as
183 a motor fuel in a diesel-powered highway vehicle or watercraft.
184 The term includes #1 fuel oil, #2 fuel oil, undyed diesel fuel and
185 kerosene but does not include gasoline or aviation fuel.

186 (32) “Distributor” means a person who acquires motor fuel
187 from a licensed supplier, permissive supplier or from another
188 licensed distributor for subsequent sale or use.

189 (33) “Diversion” means transporting motor fuel outside a
190 reasonably direct route from the source to the destination state.

191 (34) “Division” or “State Tax Division” means the Tax
192 Division of the West Virginia Department of Revenue.

193 (35) “Dyed diesel fuel” means diesel fuel that meets the
194 dyeing and marking requirements of section 4082, Title 26,
195 United States Code, regardless of how the diesel fuel was dyed.

196 (36) “End seller” means the person who sells motor fuel to
197 the ultimate user of the motor fuel.

198 (37) “Export” means to obtain motor fuel in West Virginia
199 for sale or other distribution in another state, territory or foreign
200 country.

201 (38) "Exporter" means a person that exports motor fuel from
202 this state. The seller is the exporter of motor fuel delivered
203 out-of-state by or for the seller and the purchaser is the exporter
204 of motor fuel delivered out-of-state by or for the purchaser.

205 (39) "Fuel" means motor fuel.

206 (40) "Fuel-grade ethanol" means the ASTM standard in
207 effect on the effective date of this article as the D-4806
208 specification for denatured motor fuel grade ethanol for blending
209 with gasoline.

210 (41) "Fuel supply tank" means a receptacle on a motor
211 vehicle from which motor fuel is supplied for the propulsion of
212 the motor vehicle.

213 (42) "Gallon" means a unit of liquid measure as customarily
214 used in the United States containing two hundred thirty-one
215 cubic inches by volume and expresses the volume at 60 degrees
216 Fahrenheit.

217 (43) "Gasohol" means a blended motor fuel composed of
218 gasoline and motor fuel alcohol.

219 (44) "Gasoline" means a product commonly or commercially
220 known as gasoline, regardless of classification, that is advertised
221 as, offered for sale as, sold for use as, suitable for use as or used
222 as motor fuel in an internal combustion engine, including
223 gasohol, but does not include special fuel as defined in this
224 section.

225 (45) "Gasoline blend stocks" includes any petroleum product
226 component of gasoline, such as naphtha, reformate, or toluene,
227 listed in Treas. Reg. §48.4081-1(c) (3) that can be blended for
228 use in a motor fuel. The term does not include any substance that
229 will be ultimately used for consumer nonmotor fuel use and is
230 sold or removed in drum quantities of fifty-five gallons or less
231 at the time of the removal or sale.

232 (46) "Gallon equivalent" means the amount of an alternative
233 fuel that is considered to be the equivalent of a gallon of gasoline
234 according to the National Institute of Standards and Technology
235 Handbook 130 or pursuant to guidelines issued by the Tax
236 Commissioner.

237 (47) "Gross gallons" means the total measured product,
238 exclusive of any temperature or pressure adjustments,
239 considerations or deductions, in U. S. gallons.

240 (48) "Governmental entity" means this state or a political
241 subdivision thereof or the United States or its commissioners,
242 agencies and instrumentalities.

243 (49) "Heating oil" means any combustible liquid, including,
244 but not limited to, #1 fuel oil, #2 dyed fuel oil and kerosene that
245 is burned in a boiler, furnace or stove for heating or industrial
246 processing purposes.

247 (50) "Highway" means every way or place of whatever
248 nature open to the use of the public for purposes of vehicular
249 travel in this state including the streets and alleys in towns and
250 cities.

251 (51) "Highway vehicle" means any self-propelled vehicle,
252 trailer or semitrailer that is designed or used for transporting
253 persons or property over the public highway and includes all
254 vehicles subject to registration under article three, chapter
255 seventeen-a of this code.

256 (52) "Import" means to bring motor fuel into this state by
257 motor vehicle, marine vessel, pipeline or any other means.
258 Import does not include bringing motor fuel into this state in the
259 motor fuel supply tank of a motor vehicle if the motor fuel is
260 used to power that motor vehicle.

261 (53) "Importer" means a person that imports motor fuel into
262 this state. The seller is the importer for motor fuel delivered into

263 this state from outside of this state by or for the seller and the
264 purchaser is the importer for motor fuel delivered into this state
265 from outside of this state by or for the purchaser.

266 (54) "Import verification number" means the number
267 assigned by the commissioner to a single transport vehicle
268 delivery into this state from another state upon request for an
269 assigned number by an importer or the transporter carrying
270 taxable motor fuel into this state for the account of an importer.

271 (55) "In this state" means the area within the borders of
272 West Virginia including all territory within the borders of West
273 Virginia that is owned by the United States of America.

274 (56) "Invoiced gallons" means the gallons actually billed on
275 an invoice for payment.

276 (57) "Licensee" means a person licensed by the
277 commissioner pursuant to section ten of this article.

278 (58) "Liquid" means a substance that is liquid above its
279 freezing point.

280 (59) "Liquefied natural gas" means natural gas that has been
281 liquefied at -126.1 degrees centigrade and stored in insulated
282 cryogenic tanks for use as an engine motor fuel.

283 (60) "Motor carrier" means a vehicle used, designated or
284 maintained for the transportation of persons or property and
285 having two axles and a gross vehicle weight exceeding
286 twenty-six thousand pounds or having three or more axles
287 regardless of weight or used in combination when the weight of
288 the combination exceeds twenty-six thousand pounds or
289 registered gross vehicle weight, and any aircraft, barge or other
290 watercraft or railroad locomotive transporting passengers or
291 freight in or through this state: *Provided*, That the gross vehicle
292 weight rating of the vehicles being towed is in excess of ten

293 thousand pounds. The term “motor carrier” does not include any
294 type of recreational vehicle.

295 (61) “Motor fuel” means gasoline, blended fuel, aviation
296 fuel, any special fuel and alternative fuel.

297 (62) “Motor fuel transporter” means a person who transports
298 motor fuel outside the bulk transfer/terminal system by means of
299 a transport vehicle, a railroad tank car or a marine vessel.

300 (63) “Motor vehicle” means automobiles, motor carriers,
301 motor trucks, motorcycles and all other vehicles or equipment,
302 engines or machines which are operated or propelled by
303 combustion of motor fuel.

304 (64) “Net gallons” means the amount of motor fuel measured
305 in gallons when adjusted to a temperature of sixty degrees
306 Fahrenheit and a pressure of fourteen and seven-tenths pounds
307 pressure per square inch.

308 (65) “Permissive supplier” is a person who may not be
309 subject to the taxing jurisdiction of this state but who meets both
310 of the following requirements: (A) Is registered under Section
311 4101 of the Internal Revenue Code for transactions in motor fuel
312 in the bulk transfer/terminal system; and (B) a position holder in
313 motor fuel only located in another state or a person who receives
314 motor fuel only in another state pursuant to a two-party
315 exchange: *Provided*, That a person is classified as a supplier if
316 it has or maintains, occupies or uses, within this state, directly or
317 by a subsidiary, an office, distribution house, sales house,
318 warehouse, or other place of business, or any agent or
319 representative (BY WHATEVER NAME CALLED)
320 _____operating within this state under the authority of the
321 supplier or its subsidiary.

322 (66) “Person” means an individual, firm, cooperative,
323 association, corporation, limited liability corporation, estate,

324 guardian, executor, administrator, trust, business trust, syndicate,
325 partnership, limited partnership, copartnership, organization,
326 limited liability partnership, joint venture, receiver and trustee in
327 bankruptcy. "Person" also means a club, society or other group
328 or combination acting as a unit, a public body including, but not
329 limited to, this state and any other state and an agency,
330 commissioner, institution, political subdivision or
331 instrumentality of this state or any other state and, also, an
332 officer, employee or member of any of the foregoing who, as an
333 officer, employee or member, is under a duty to perform or is
334 responsible for the performance of an act prescribed by the
335 provisions of this article.

336 (67) "Position holder" means the person who holds the
337 inventory position in motor fuel in a terminal as reflected on the
338 records of the terminal operator. A person holds the inventory
339 position in motor fuel when that person has a contract with the
340 terminal operator for the use of storage facilities and terminaling
341 services for motor fuel at the terminal. The term includes a
342 terminal operator who owns motor fuel in the terminal.

343 (68) "Principal" means:

344 (A) If a partnership, all its partners;

345 (B) If a corporation, all its officers, directors, and controlling
346 direct or indirect owners;

347 (C) If a limited liability company, all its members; or

348 (D) An individual.

349 (69) "Producer/manufacturer" means a person who produces,
350 refines, blends, distills, manufactures or compounds motor fuel.

351 (70) "Provider of alternative fuel" means a person who does
352 one or more of the following:

353 (A) Acquires alternative fuel for sale or delivery to an
354 alternative-fuel bulk end user or an alternative-fuel retailer;

355 (B) Maintains storage facilities for alternative fuel including
356 alternative-fuel home refueling infrastructures and alternative-
357 fuel commercial refueling infrastructures, part or all of which the
358 person uses or sells to someone other than an alternative-fuel
359 bulk end user or an alternative-fuel retailer to operate a highway
360 vehicle;

361 (C) Sells alternative fuel and uses part of the fuel acquired
362 for sale to operate a highway vehicle by means of a fuel supply
363 line from the cargo tank of the vehicles to the engine of the
364 vehicle;

365 (D) Imports alternative fuel into this state by a means other
366 than the usual tank or receptacle connected with the engine of a
367 highway vehicle for use by that person to operate a highway
368 vehicle.

369 (71) "Rack" means a mechanism for delivering motor fuel
370 from a refinery, terminal, marine vessel or bulk plant into a
371 transport vehicle, railroad tank car or other means of transfer that
372 is outside the bulk transfer/terminal system.

373 (72) "Railroad locomotive" means diesel-powered
374 equipment or machinery that rides on railroad rails and includes
375 a switching engine.

376 (73) "Receive" means acquisition of ownership or
377 possession of motor fuel.

378 (74) "Refiner" means a person who owns, operates or
379 otherwise controls a refinery.

380 (75) "Refinery" means a facility for the manufacture or
381 reprocessing of finished or unfinished petroleum products usable

382 as motor fuel and from which motor fuel may be removed by
383 pipeline or marine vessel or at a rack.

384 (76) "Removal" means a physical transfer other than by
385 evaporation, loss or destruction. A physical transfer to a
386 transport vehicle or other means of conveyance outside the bulk
387 transfer/terminal system is complete upon delivery into the
388 means of conveyance.

389 (77) "Retailer" means a person who sells motor fuel at retail
390 or dispenses motor fuel at a retail location.

391 (78) "Retailer of alternative fuel" means a person who
392 maintains storage facilities, including alternative-fuel vehicle
393 commercial refueling infrastructure, for alternative fuel and who
394 sells the fuel at retail or dispenses the fuel at a retail location to
395 operate a motor vehicle.

396 (79) "Special fuel" means a gas or liquid, other than
397 gasoline, used or suitable for use as motor fuel in an internal
398 combustion engine or motor to propel or operate any form of
399 vehicle, machine, or mechanical contrivance and includes
400 products commonly known as natural or casing-head gasoline,
401 diesel fuel, dyed diesel fuel, biodiesel fuel, transmix, methanol,
402 ethanol, methanol fuel, M100, ethanol fuel, E100, ethanol fuel
403 blend, E85 and any fuel mixture that contains eighty-five percent
404 or more alcohol by volume when combined with gasoline or
405 other fuels and liquid fuel derived from coal through the
406 Fischer-Tropsch process. "Special fuel" does not include
407 alternative fuel or any petroleum product or chemical compound
408 such as alcohol, industrial solvent, heavy furnace oil or lubricant,
409 unless blended in or sold for use as motor fuel in an internal
410 combustion engine.

411 (80) "State" or "this state" means the State of West Virginia.

412 (81) "Supplier" means a person that is:

413 (A) Subject to the general taxing jurisdiction of this state;

414 (B) Registered under Section 4101 of the Internal Revenue
415 Code for transactions in motor fuel in the bulk transfer/terminal
416 distribution system; and

417 (C) One of the following:

418 (i) A position holder in motor fuel in a terminal or refinery
419 in this state and may concurrently be a position holder in motor
420 fuel in another state; or

421 (ii) A person who receives motor fuel in this state pursuant
422 to a two-party exchange.

423 A terminal operator is not a supplier based solely on the fact
424 that the terminal operator handles motor fuel consigned to it
425 within a terminal.

426 (82) "Tax" or "this tax" is the motor fuel excise tax imposed
427 by this article and includes within its meaning interest and
428 additions to tax and penalties unless the context requires a more
429 limited meaning.

430 (83) "Taxpayer" means a person required to file a return for
431 the tax imposed by this article or a person liable for payment of
432 the tax imposed by this article.

433 (84) "Terminal" means a motor fuel storage and distribution
434 facility to which a terminal control number has been assigned by
435 the Internal Revenue Service, to which motor fuel is supplied by
436 pipeline or marine vessel and from which motor fuel may be
437 removed at a rack.

438 (85) "Terminal operator" means a person who owns,
439 operates or otherwise controls a terminal.

440 (86) "Transmix" means: (A) The buffer or interface between
441 two different products in a pipeline shipment; or (B) a mix of

442 two different products within a refinery or terminal that results
443 in an off-grade mixture.

444 (87) "Transport vehicle" means a vehicle designed or used
445 to carry motor fuel over the highway and includes a straight
446 truck, a straight truck/trailer combination and a semitrailer
447 combination rig.

448 (88) "Trustee" means a person who is licensed as a supplier
449 or a permissive supplier and receives tax payments from and on
450 behalf of another pursuant to section twenty-four of this article.

451 (89) "Two-party exchange" means a transaction in which
452 motor fuel is transferred from one licensed supplier or
453 permissive supplier to another licensed supplier or permissive
454 supplier pursuant to an exchange agreement; and

455 (A) Includes a transfer from the person who holds the
456 inventory position in taxable motor fuel in the terminal as
457 reflected on the records of the terminal operator;

458 (B) Is completed prior to removal of the product from the
459 terminal by the receiving exchange partner; and

460 (C) Is recorded on the terminal operator's books and records
461 with the receiving exchange partner as the supplier that removes
462 the motor fuel across the terminal rack for purposes of reporting
463 the transaction to this state.

464 (90) "Use" means the actual consumption or receipt of motor
465 fuel by a person into a motor vehicle, aircraft or watercraft.

466 (91) "Watercraft" means any vehicle used on waterways.

§11-14C-5. Taxes levied; rate.

1 (a) There is hereby levied on all motor fuel an excise tax
2 composed of a flat rate equal to \$.205 per invoiced gallon and,

3 on alternative fuel, on each gallon equivalent, plus a variable
4 component comprised of:

5 (1) On motor fuel other than alternative fuel, either the tax
6 imposed by section eighteen-b, article fifteen of this chapter or
7 the tax imposed under section thirteen-a, article fifteen-a of this
8 chapter, as applicable: *Provided*, That the motor fuel excise tax
9 shall take effect January 1, 2004; *Provided, however*, That the
10 variable component shall be equal to five percent of the average
11 wholesale price of the motor fuel; *Provided further*, That the
12 average wholesale price shall be no less than \$.97 per invoiced
13 gallon and is computed as hereinafter prescribed in this section;
14 *And provided further*, That on and after January 1, 2010, the
15 average wholesale price shall be no less than \$2.34 per invoiced
16 gallon and is computed as hereinafter prescribed in this section;
17 and

18 (2) On alternative fuel, either the tax imposed by section
19 eighteen-b, article fifteen of this chapter or the tax imposed
20 under section thirteen-a, article fifteen-a of this chapter, as
21 applicable. The tax on alternative fuel takes effect on January 1,
22 2014, with a variable component equal to five percent of the
23 average wholesale price of the alternative fuel.

24 (b) *Determination of average wholesale price. –*

25 (1) To simplify determining the average wholesale price of
26 all motor fuel, the Tax Commissioner shall, effective with the
27 period beginning the first day of the month of the effective date
28 of the tax and each January 1 thereafter, determine the average
29 wholesale price of motor fuel for each annual period on the basis
30 of sales data gathered for the preceding period of July 1 through
31 October 31. Notification of the average wholesale price of motor
32 fuel shall be given by the Tax Commissioner at least thirty days
33 in advance of each January 1 by filing notice of the average
34 wholesale price in the State Register and by other means as the
35 Tax Commissioner considers reasonable.

36 (2) The “average wholesale price” means the single,
37 statewide average per gallon wholesale price, rounded to the
38 third decimal (thousandth of a cent), exclusive of state and
39 federal excise taxes on each gallon of motor fuel or on each
40 gallon equivalent of alternative fuel as determined by the Tax
41 Commissioner from information furnished by suppliers,
42 importers and distributors of motor fuel and alternative-fuel
43 providers, alternative-fuel bulk end users and retailers of
44 alternative fuel in this state, or other information regarding
45 wholesale selling prices as the Tax Commissioner may gather or
46 a combination of information. In no event shall the average
47 wholesale price be determined to be less than \$.97 per gallon of
48 motor fuel. For calendar year 2009, the average wholesale price
49 of motor fuel shall not exceed the average wholesale price of
50 motor fuel for calendar year 2008 as determined pursuant to the
51 notice filed by the Tax Commissioner with the Secretary of State
52 on November 21, 2007, and published in the State Register on
53 November 30, 2007. On and after January 1, 2010, in no event
54 shall the average wholesale price be determined to be less than
55 \$2.34 per gallon of motor fuel. On and after January 1, 2011, the
56 average wholesale price shall not vary by more than ten percent
57 from the average wholesale price of motor fuel as determined by
58 the Tax Commissioner for the previous calendar year. Any
59 limitation on the average wholesale price of motor fuel contained
60 in this subsection shall not be applicable to alternative fuel.

61 (3) All actions of the Tax Commissioner in acquiring data
62 necessary to establish and determine the average wholesale price
63 of motor fuel, in providing notification of his or her
64 determination prior to the effective date of a change in rate, and
65 in establishing and determining the average wholesale price of
66 motor fuel may be made by the Tax Commissioner without
67 compliance with the provisions of article three, chapter
68 twenty-nine-a of this code.

69 (4) In an administrative or court proceeding brought to
70 challenge the average wholesale price of motor fuel as

71 determined by the Tax Commissioner, his or her determination
72 is presumed to be correct and shall not be set aside unless it is
73 clearly erroneous.

74 (c) There is hereby levied a floorstocks tax on motor fuel
75 held in storage outside the bulk transfer/terminal system as of the
76 close of the business day preceding January 1, 2004, and upon
77 which the tax levied by this section has not been paid. For the
78 purposes of this section, "close of the business day" means the
79 time at which the last transaction has occurred for that day. The
80 floorstocks tax is payable by the person in possession of the
81 motor fuel on January 1, 2004. The amount of the floorstocks tax
82 on motor fuel is equal to the sum of the tax rate specified in
83 subsection (a) of this section multiplied by the gallons in storage
84 as of the close of the business day preceding January 1, 2004.

85 (1) Persons in possession of taxable motor fuel in storage
86 outside the bulk transfer/terminal system as of the close of the
87 business day preceding January 1, 2004, shall:

88 (A) Take an inventory at the close of the business day
89 preceding January 1, 2004, to determine the gallons in storage
90 for purposes of determining the floorstocks tax;

91 (B) Report no later than January 31, 2004, the gallons on
92 forms provided by the commissioner; and

93 (C) Remit the tax levied under this section no later than June
94 1, 2004.

95 (2) In the event the tax due is paid to the commissioner on or
96 before January 31, 2004, the person remitting the tax may deduct
97 from their remittance five percent of the tax liability due.

98 (3) In the event the tax due is paid to the commissioner after
99 June 1, 2004, the person remitting the tax shall pay, in addition
100 to the tax, a penalty in the amount of five percent of the tax
101 liability due.

102 (4) In determining the amount of floorstocks tax due under
103 this section, the amount of motor fuel in dead storage may be
104 excluded. There are two methods for calculating the amount of
105 motor fuel in dead storage:

106 (A) If the tank has a capacity of less than ten thousand
107 gallons, the amount of motor fuel in dead storage is two hundred
108 gallons and if the tank has a capacity of ten thousand gallons or
109 more, the amount of motor fuel in dead storage is four hundred
110 gallons; or

111 (B) Use the manufacturer's conversion table for the tank
112 after measuring the number of inches between the bottom of the
113 tank and the bottom of the mouth of the drainpipe: *Provided,*
114 That the distance between the bottom of the tank and the bottom
115 of the mouth of the draw pipe is presumed to be six inches.

116 (d) Every licensee who, on the effective date of any rate
117 change, has in inventory any motor fuel upon which the tax or
118 any portion thereof has been previously paid shall take a
119 physical inventory and file a report thereof with the
120 commissioner, in the format as required by the commissioner,
121 within thirty days after the effective date of the rate change, and
122 shall pay to the commissioner at the time of filing the report any
123 additional tax due under the increased rate.

124 (e) The Tax Commissioner shall determine by January 1,
125 2014, the gasoline gallon equivalent for each alternative fuel by
126 filing a notice of the gasoline gallon equivalent in the State
127 Register and by other means that the Tax Commissioner
128 considers reasonable. The Tax Commissioner may redetermine
129 the gasoline gallon equivalent for each alternative fuel by filing
130 a notice of the gasoline gallon equivalent in the State Register at
131 least thirty days in advance of January 1 for the next succeeding
132 tax year. For purposes of this notice, the Tax Commissioner may
133 adopt or incorporate by reference provisions of the National

134 Institute of Standards and Technology, United States Department
135 of Commerce, the Internal Revenue Code, United States
136 Treasury Regulations, the Internal Revenue Service publications
137 or guidelines or other publications or guidelines which may be
138 useful in determining, setting or describing the gasoline gallon
139 equivalent for each alternative fuel used as motor fuel.

§11-14C-6a. Point of imposition of motor fuels tax on alternative fuel.

1 (a) The tax levied pursuant to section five of this article is
2 imposed on alternative fuel without regard to whether it is sold,
3 transported or distributed within the bulk transfer/terminal
4 system or outside of the bulk transfer/terminal system.

5 (b) The tax levied pursuant to section five of this article is
6 imposed on alternative fuel that is not otherwise taxed at the
7 point of imposition prescribed under section six of this article at
8 the following points of imposition in the following order:

9 (1) At the time alternative fuel is withdrawn from the storage
10 facility including alternative-fuel home refueling infrastructures
11 and alternative-fuel commercial refueling infrastructures;

12 (2) If not taxed at the point of imposition described in
13 subdivision (1) of this subsection, then at the time alternative
14 fuel is sold for use in a highway vehicle;

15 (3) If not taxed at the point of imposition described in
16 subdivision (1) or at the point of imposition described in
17 subdivision (2) of this subsection, then at the time alternative
18 fuel is used in a highway vehicle.

§11-14C-9. Exemptions from tax; claiming refunds of tax.

1 (a) *Per se exemptions from flat rate component of tax.* –
2 Sales of motor fuel to the following, or as otherwise stated in this

3 subsection, are exempt per se from the flat rate of the tax levied
4 by section five of this article and the flat rate may not be paid at
5 the rack:

6 (1) All motor fuel exported from this state to any other state
7 or nation: *Provided*, That the supplier collects and remits to the
8 destination state or nation the appropriate amount of tax due on
9 the motor fuel transported to that state or nation. This exemption
10 does not apply to motor fuel which is transported and delivered
11 outside this state in the motor fuel supply tank of a highway
12 vehicle;

13 (2) Sales of aviation fuel;

14 (3) Sales of dyed special fuel; and

15 (4) Sales of propane unless sold for use in a motor vehicle.

16 (b) *Per se exemptions from variable component of tax.* –
17 Sales of motor fuel to the following are exempt per se from the
18 variable component of the tax levied by section five of this
19 article and the variable component may not be paid at the rack:

20 All motor fuel exported from this state to any other state or
21 nation: *Provided*, That the supplier collects and remits to the
22 destination state or nation the appropriate amount of tax due on
23 the motor fuel transported to that state or nation. This exemption
24 does not apply to motor fuel which is transported and delivered
25 outside this state in the motor fuel supply tank of a highway
26 vehicle.

27 (c) *Refundable exemptions from flat rate component of tax.*
28 – A person having a right or claim to any of the following
29 exemptions from the flat rate component of the tax levied by
30 section five of this article shall first pay the tax levied by this
31 article and then apply to the Tax Commissioner for a refund:

32 (1) The United States or agency thereof: *Provided*, That if
33 the United States government, or agency or instrumentality
34 thereof, does not pay the seller the tax imposed by section five
35 of this article on a purchase of motor fuel, the person selling tax
36 previously paid motor fuel to the United States government, or
37 its agencies or instrumentalities, may claim a refund of the flat
38 rate component of tax imposed by section five of this article on
39 those sales;

40 (2) A county government or unit or agency thereof;

41 (3) A municipal government or any agency thereof;

42 (4) A county board of education;

43 (5) An urban mass transportation authority created pursuant
44 to the provisions of article twenty-seven, chapter eight of this
45 code;

46 (6) A municipal, county, state or federal civil defense or
47 emergency service program pursuant to a government contract
48 for use in conjunction therewith or to a person who is required
49 to maintain an inventory of motor fuel for the purpose of the
50 program; *Provided*, That motor fueling facilities used for these
51 purposes are not capable of fueling motor vehicles and the
52 person in charge of the program has in his or her possession a
53 letter of authority from the Tax Commissioner certifying his or
54 her right to the exemption. In order for this exemption to apply,
55 motor fuel sold under this subdivision and subdivisions (1)
56 through (5), inclusive, of this subsection shall be used in vehicles
57 or equipment owned and operated by the respective government
58 entity or government agency or authority;

59 (7) All invoiced gallons of motor fuel purchased by a
60 licensed exporter and subsequently exported from this state to
61 any other state or nation: *Provided*, That the exporter has paid
62 the applicable motor fuel tax to the destination state or nation

63 prior to claiming this refund or the exporter has reported to the
64 destination state or nation that the motor fuel was sold in a
65 transaction not subject to tax in that state or nation. A refund
66 may not be granted on motor fuel which is transported and
67 delivered outside this state in the motor fuel supply tank of a
68 highway vehicle;

69 (8) All gallons of motor fuel used and consumed in
70 stationary off-highway turbine engines;

71 (9) All gallons of fuel used for heating any public or private
72 dwelling, building or other premises;

73 (10) All gallons of fuel used for boilers;

74 (11) All gallons of motor fuel used as a dry cleaning solvent
75 or commercial or industrial solvent;

76 (12) All gallons of motor fuel used as lubricants, ingredients
77 or components of a manufactured product or compound;

78 (13) All gallons of motor fuel sold for use or used as a motor
79 fuel for commercial watercraft;

80 (14) All gallons of motor fuel sold for use or consumed in
81 railroad diesel locomotives;

82 (15) All gallons of motor fuel purchased in quantities of
83 twenty-five gallons or more for use as a motor fuel for internal
84 combustion engines not operated upon highways of this state;

85 (16) All gallons of motor fuel purchased in quantities of
86 twenty-five gallons or more and used to power a power take-off
87 unit on a motor vehicle. When a motor vehicle with auxiliary
88 equipment uses motor fuel and there is no auxiliary motor for the
89 equipment or separate tank for a motor, the person claiming the
90 refund may present to the Tax Commissioner a statement of his

91 or her claim and is allowed a refund for motor fuel used in
92 operating a power take-off unit on a cement mixer truck or
93 garbage truck equal to twenty-five percent of the tax levied by
94 this article paid on all motor fuel used in such a truck;

95 (17) Motor fuel used by a person regularly operating a
96 vehicle under a certificate of public convenience and necessity
97 or under a contract carrier permit for transportation of persons
98 when purchased in an amount of twenty-five gallons or more:
99 *Provided, That the amount refunded is equal to \$0.6 per gallon:*
100 *Provided, however, That the gallons of motor fuel have been*
101 *consumed in the operation of urban and suburban bus lines and*
102 *the majority of passengers use the bus for traveling a distance*
103 *not exceeding forty miles, measured one way, on the same day*
104 *between their places of abode and their places of work, shopping*
105 *areas or schools; and*

106 (18) All gallons of motor fuel that are not otherwise exempt
107 under subdivisions (1) through (6), inclusive, of this subsection
108 and that are purchased and used by any bona fide volunteer fire
109 department, nonprofit ambulance service or emergency rescue
110 service that has been certified by the municipality or county
111 wherein the bona fide volunteer fire department, nonprofit
112 ambulance service or emergency rescue service is located.

113 (d) *Refundable exemptions from variable rate component of*
114 *tax. – Any of the following persons may claim an exemption*
115 *from the variable rate component of the tax levied by section*
116 *five of this article on the purchase and use of motor fuel by first*
117 *paying the tax levied by this article and then applying to the Tax*
118 *Commissioner for a refund.*

119 (1) The United States or agency thereof: *Provided, That if*
120 *the United States government, or agency or instrumentality*
121 *thereof, does not pay the seller the tax imposed by section five*
122 *of this article on any purchase of motor fuel, the person selling*

123 tax previously paid motor fuel to the United States government,
124 or its agencies or instrumentalities, may claim a refund of the
125 variable rate of tax imposed by section five of this article on
126 those sales.

127 (2) This state and its institutions;

128 (3) A county government or unit or agency thereof;

129 (4) A municipal government or agency thereof;

130 (5) A county board of education;

131 (6) An urban mass transportation authority created pursuant
132 to the provisions of article twenty-seven, chapter eight of this
133 code;

134 (7) A municipal, county, state or federal civil defense or
135 emergency service program pursuant to a government contract
136 for use in conjunction therewith, or to a person who is required
137 to maintain an inventory of motor fuel for the purpose of the
138 program: *Provided*, That fueling facilities used for these
139 purposes are not capable of fueling motor vehicles and the
140 person in charge of the program has in his or her possession a
141 letter of authority from the Tax Commissioner certifying his or
142 her right to the exemption;

143 (8) A bona fide volunteer fire department, nonprofit
144 ambulance service or emergency rescue service that has been
145 certified by the municipality or county where the bona fide
146 volunteer fire department, nonprofit ambulance service or
147 emergency rescue service is located; or

148 (9) All invoiced gallons of motor fuel purchased by a
149 licensed exporter and subsequently exported from this state to
150 any other state or nation: *Provided*, That the exporter has paid
151 the applicable motor fuel tax to the destination state or nation

152 prior to claiming this refund. A refund may not be granted on
153 motor fuel which is transported and delivered outside this state
154 in the motor fuel supply tank of a highway vehicle.

155 (e) The provision in subdivision (9), subsection (a), section
156 nine, article fifteen of this chapter that exempts as a sale for
157 resale those sales of gasoline and special fuel by a distributor or
158 importer to another distributor does not apply to sales of motor
159 fuel under this article.

PART 3. MOTOR FUEL LICENSING.

§11-14C-10. Persons required to be licensed.

1 (a) A person shall obtain the appropriate license or licenses
2 issued by the commissioner before conducting the activities of:

3 (1) A supplier which includes a refiner;

4 (2) A permissive supplier;

5 (3) An importer;

6 (4) An exporter;

7 (5) A terminal operator;

8 (6) A blender;

9 (7) A motor fuel transporter;

10 (8) A distributor;

11 (9) A producer/manufacturer;

12 (10) An alternative-fuel bulk end user;

13 (11) A provider of alternative fuel; or

14 (12) A retailer of alternative fuel.

15 (b) A person who is engaged in more than one activity for
16 which a license is required shall have a separate license for each
17 activity, except as otherwise determined by the commissioner.

§11-14C-13. Bond requirements.

1 (a) Along with an application for a license required by
2 section eleven of this article, either a cash bond or a continuous
3 surety bond in the amount or amounts specified in this section
4 shall be filed. If a person has filed applications for licenses for
5 more than one activity, the commissioner may combine the
6 amount of the cash bond or continuous surety bond required for
7 each licensed activity into one amount that shall be no less than
8 the largest amount required for any of those activities for which
9 the license applications are filed. If a continuous surety bond is
10 filed, an annual notice of renewal shall be filed thereafter. If the
11 continuous surety bond includes the requirements that the
12 commissioner is to be notified of cancellation at least sixty days
13 prior to the continuous surety bond being canceled, an annual
14 notice of renewal is not required. The bond, whether a cash bond
15 or a continuous surety bond, is conditioned upon compliance
16 with the requirements of this article, payable to this state and in
17 the form required by the commissioner. The amount of the bond
18 is as follows:

19 (1) For a supplier license, the amount shall be a minimum of
20 \$100,000 or an amount equal to three months' tax liability,
21 whichever is greater, but shall not exceed \$2 million: When
22 required by the commissioner to file a cash bond or a continuous
23 surety bond in an additional amount, the licensee shall comply
24 with the commissioner's notification within thirty days after
25 receiving that notification;

26 (2) For a permissive supplier license, the amount shall be a
27 minimum of \$100,000 or an amount equal to three months' tax

28 liability, whichever is greater, but shall not exceed \$2 million.
29 When required by the commissioner to file a cash bond or a
30 continuous surety bond in an additional amount, the licensee
31 shall comply with the commissioner's notification within thirty
32 days after receiving that notification;

33 (3) For a terminal operator license, the amount shall be a
34 minimum of \$100,000 or an amount equal to three months' tax
35 liability, whichever is greater, but shall not exceed \$2 million.
36 When required by the commissioner to file a cash bond or a
37 continuous surety bond in an additional amount, the licensee
38 shall comply with the commissioner's notification within thirty
39 days after receiving that notification;

40 (4) For an importer license for a person, other than a
41 supplier, that imports by transport vehicle or another means of
42 transfer outside the bulk transfer/terminal system motor fuel
43 removed from a terminal located in another state in which: (A)
44 The state from which the motor fuel is imported does not require
45 the seller of the motor fuel to collect a motor fuel excise tax on
46 the removal either at that state's rate or the rate of the destination
47 state; and (B) the seller of the motor fuel is not a permissive
48 supplier, the amount shall be a minimum of \$100,000 or an
49 amount equal to three months' tax liability, whichever is greater,
50 but shall not exceed \$2 million. When required by the
51 commissioner to file a cash bond or a continuous surety bond in
52 an additional amount, the licensee shall comply with the
53 commissioner's notification within thirty days after receiving
54 that notification;

55 (5) For an importer license for a person that imports by
56 transport vehicle or another means outside the bulk
57 transfer/terminal system motor fuel removed from a terminal
58 located in another state in which: (A) The state from which the
59 motor fuel is imported requires the seller of the motor fuel to
60 collect a motor fuel excise tax on the removal either at that

61 state's rate or the rate of the destination state; or (B) the seller of
62 the motor fuel is a permissive supplier, the amount shall be a
63 minimum of \$2,000 or an amount equal to three months' tax
64 liability, whichever is greater, but shall not exceed \$300,000.
65 When required by the commissioner to file a cash bond or a
66 continuous surety bond in an additional amount, the licensee
67 shall comply with the commissioner's notification within thirty
68 days after receiving that notification;

69 (6) For a license as both a distributor and an importer as
70 described in subdivision (4) of this subsection, the amount shall
71 be a minimum of \$100,000 or an amount equal to three months'
72 tax liability, whichever is greater, but shall not exceed \$2
73 million. When required by the commissioner to file a cash bond
74 or a continuous surety bond in an additional amount, the licensee
75 shall comply with the commissioner's notification within thirty
76 days after receiving that notification;

77 (7) For a license as both a distributor and an importer as
78 described in subdivision (5) of this subsection, the amount shall
79 be a minimum of \$2,000 or an amount equal to three months' tax
80 liability, whichever is greater, but shall not exceed \$300,000.
81 When required by the commissioner to file a cash bond or a
82 continuous surety bond in an additional amount, the licensee
83 shall comply with the commissioner's notification within thirty
84 days after receiving that notification;

85 (8) For an exporter license, the amount shall be a minimum
86 of \$2,000 or an amount equal to three months' tax liability,
87 whichever is greater, but shall not exceed \$300,000. When
88 required by the commissioner to file a cash bond or a continuous
89 surety bond in an additional amount, the licensee shall comply
90 with the commissioner's notification within thirty days after
91 receiving that notification;

92 (9) For a blender license, the amount shall be a minimum of
93 \$2,000 or an amount equal to three months' tax liability,

94 whichever is greater, but shall not exceed \$300,000. When
95 required by the commissioner to file a cash bond or a continuous
96 surety bond in an additional amount, the licensee shall comply
97 with the commissioner's notification within thirty days after
98 receiving that notification;

99 (10) For a distributor license, the amount shall be a
100 minimum of \$2,000 or an amount equal to three months' tax
101 liability, whichever is greater, but shall not exceed \$300,000.
102 When required by the commissioner to file a cash bond or a
103 continuous surety bond in an additional amount, the licensee
104 shall comply with the commissioner's notification within thirty
105 days after receiving that notification;

106 (11) For a motor fuel transporter license, there is no bond;

107 (12) For a producer/manufacturer license, there is no bond.
108 If the taxpayer fails to file a return or remit tax due under this
109 article, the commissioner may require a cash bond or a
110 continuous surety bond in an amount to be determined by the
111 commissioner. When required by the commissioner to file a cash
112 bond or a continuous surety bond, the licensee shall comply with
113 the commissioner's notification within thirty days after receiving
114 that notification;

115 (13) For an alternative-fuel bulk end user, a provider of
116 alternative fuel and a retailer of alternative fuel, there is no bond.
117 If the taxpayer fails to file a return or remit tax due under this
118 article, the commissioner may require a cash bond or a
119 continuous surety bond in an amount to be determined by the
120 commissioner. When required by the commissioner to file a cash
121 bond or a continuous surety bond, the licensee shall comply with
122 the commissioner's notification within thirty days after receiving
123 that notification; and

124 (14) An applicant for a licensed activity listed under
125 subdivisions (1) through (10), inclusive, of this subsection may,

126 in lieu of posting either the cash bond or continuous surety bond
127 required by this subsection, provide proof of financial
128 responsibility acceptable to the commissioner. The proof of
129 financial responsibility must demonstrate the absence of
130 circumstances indicating risk with the collection of taxes from
131 the applicant. The following constitutes proof of financial
132 responsibility:

133 (A) Proof of \$5 million net worth constitutes evidence of
134 financial responsibility in lieu of posting the required bond;

135 (B) Proof of \$2,500,000 net worth constitutes financial
136 responsibility in lieu of posting fifty percent of the required
137 bond; and

138 (C) Proof of \$1,250,000 net worth constitutes financial
139 responsibility in lieu of posting twenty-five percent of the
140 required bond. Net worth is calculated on a business, not
141 individual basis.

142 (15) In lieu of providing either cash bond, a continuance
143 surety bond or proof of financial responsibility acceptable to the
144 commissioner, an applicant for a licensed activity listed under
145 this subsection that has established with the State Tax Division
146 a good filing record that is accurate, complete and timely for the
147 preceding eighteen months shall be granted a waiver of the
148 requirement to file either a cash bond or continuance surety
149 bond. When a licensee that has been granted a waiver of the
150 requirement to file a bond violates a provision of this article, the
151 licensee shall file the applicable bond as stated in this
152 subsection.

153 (16) A licensee who disagrees with the commissioner's
154 decision requiring new or additional security may seek a hearing
155 by filing a petition with the Office of Tax Appeals in accordance
156 with the provisions of section nine, article ten-a of this chapter.

157 The hearing shall be provided within thirty days after receipt by
158 the Office of Tax Appeals of the petition.

159 (b) The surety must be authorized under article nineteen,
160 chapter thirty-three of this code to engage in business of
161 transacting surety insurance within this state. The cash bond and
162 the continuous surety bond are conditioned upon faithful
163 compliance with the provisions of this article, including the
164 filing of the returns and payment of all tax prescribed by this
165 article. The cash bond and the continuous surety bond shall be
166 approved by the commissioner as to sufficiency and form and
167 shall indemnify the state against loss arising from the failure of
168 the taxpayer to pay, for any cause whatever, the motor fuel
169 excise tax levied by this article.

170 (c) Surety on a continuous surety bond furnished hereunder
171 is relieved, released and discharged from all liability accruing on
172 the bond after the expiration of sixty days from the date the
173 surety shall have lodged, by certified mail, with the
174 commissioner, a written request to be discharged. Discharge
175 from the continuous surety bond does not relieve, release or
176 discharge the surety from liability already accrued or which will
177 accrue before the expiration of the sixty-day period. Whenever
178 a surety seeks discharge as herein provided, it is the duty of the
179 principal of the bond to supply the commissioner with another
180 continuous surety bond or a cash bond prior to the expiration of
181 the original bond. Failure to provide a new continuous surety
182 bond or a cash bond shall result in the commissioner canceling
183 each license and registration previously issued to the person.

184 (d) A taxpayer that has furnished a cash bond hereunder is
185 relieved, released and discharged from all liability accruing on
186 the cash bond after the expiration of sixty days from the date the
187 taxpayer shall have lodged, by certified mail, with the
188 commissioner, a written request to be discharged and the amount
189 of the cash bond refunded. The commissioner may retain all or

190 part of the cash bond until the commissioner performs an audit
191 of the taxpayer's business or three years, whichever first occurs.
192 Discharge from the cash bond shall not relieve, release or
193 discharge the taxpayer from liability already accrued or which
194 will accrue before the expiration of the sixty-day period.
195 Whenever a taxpayer seeks discharge as herein provided, it is the
196 duty of the taxpayer to provide the commissioner with another
197 cash bond or a continuous surety bond prior to the expiration of
198 the original cash bond. Failure to provide either a new cash bond
199 or a continuous surety bond shall result in the commissioner
200 canceling each license and registration previously issued to the
201 taxpayer.

PART 4. PAYMENT AND REPORTING OF
TAX ON MOTOR FUEL.

§11-14C-19. When tax return and payment are due.

1 (a) The tax levied by this article shall be paid by each
2 taxpayer on or before the last day of the calendar month by
3 check, bank draft or money order payable to the commissioner
4 for the amount of tax due, if any, for the preceding month. The
5 commissioner may require all or certain taxpayers to file tax
6 returns and payments electronically. The return required by the
7 commissioner shall accompany the payment of tax. If no tax is
8 due, the return required by the commissioner shall be completed
9 and filed before the last day of the calendar month for the
10 preceding month.

11 (b) The following shall file a monthly return as required by
12 this section:

13 (1) A terminal operator;

14 (2) A supplier;

15 (3) An importer;

16 (4) A blender;

17 (5) A person incurring liability under section eight of this
18 article for the backup tax on motor fuel;

19 (6) A permissive supplier;

20 (7) A motor fuel transporter;

21 (8) An exporter; and

22 (9) A producer/manufacturer.

23 (c) For the calendar years beginning on or after January 1,
24 2014, the tax levied by this article on alternative fuel that is
25 subject to tax at the point of imposition prescribed in section six-
26 a of this article shall be paid by the alternative-fuel bulk end
27 user, provider of alternative fuel or retailer of alternative fuel on
28 or before January 31 of every year, unless determined by the Tax
29 Commissioner that payment must be made more frequently, by
30 check, bank draft or money order payable to the Tax
31 Commissioner for the amount of tax due. The Tax Commissioner
32 may require all or certain taxpayers to file tax returns and
33 payments electronically. The return required by the Tax
34 Commissioner shall accompany the payment of tax. If no tax is
35 due, the return required by the Tax Commissioner shall be
36 completed and filed on or before January 31.

ARTICLE 15. CONSUMER SALES AND SERVICE TAX.

§11-15-18b. Tax on motor fuel.

1 (a) *General.* – All sales of motor fuel and alternative fuel
2 subject to the flat rate of the tax imposed by section five, article
3 fourteen-c of this chapter, are subject to the tax imposed by this
4 article and comprises the variable component of the tax imposed
5 by section five, article fourteen-c of this chapter and is collected

6 and remitted at the time the tax imposed by said section is
7 remitted. Sales of motor fuel and alternative fuel upon which the
8 tax imposed by this article has been paid is not again taxed under
9 the provisions of this article. This section means that all gallons
10 of motor fuel and equivalent gallons of alternative fuel sold and
11 delivered or delivered in this state are taxed one time.

12 (b) *Measure of tax.* – The measure of tax imposed by this
13 article is as follows:

14 On sales of motor fuel, the average wholesale price as
15 defined and determined in section five, article fourteen-c of this
16 chapter. For purposes of maintaining revenue for highways, and
17 recognizing that the tax imposed by this article is generally
18 imposed on gross proceeds from sales to ultimate consumers,
19 whereas the tax on motor fuel herein is imposed on the average
20 wholesale price of the motor fuel; in no case, for the purposes of
21 taxation under this article, may the average wholesale price be
22 determined to be less than \$.97 per gallon of motor fuel for all
23 gallons of motor fuel sold during the reporting period,
24 notwithstanding any provision of this article to the contrary. On
25 and after January 1, 2010, for the purpose of taxation under this
26 article, in no case may the average wholesale price be
27 determined to be less than \$2.34 per gallon of motor fuel for all
28 gallons of motor fuel sold during the reporting period
29 notwithstanding any provision of this article to the contrary. Any
30 limitation on the average wholesale price of motor fuel contained
31 in this subsection shall not be applicable to alternative fuel.

32 (2) On sales of alternative fuel, the average wholesale price
33 as defined and determined in section five, article fourteen-c of
34 this chapter.

35 (c) *Definitions.* – For purposes of this article, the terms
36 “gasoline” and “special fuel” and “alternative fuel” are defined
37 as provided in section two, article fourteen-c of this chapter.

38 Other terms used in this section have the same meaning as when
39 used in a similar context in said article.

40 (d) *Tax return and tax due.* –

41 (1) The tax imposed by this article on sales of motor fuel
42 shall be paid by each taxpayer on or before the last day of the
43 calendar month by check, bank draft, certified check or money
44 order payable to the Tax Commissioner for the amount of tax
45 due for the preceding month notwithstanding any provision of
46 this article to the contrary. The commissioner may require all or
47 certain taxpayers to file tax returns and payments electronically.
48 The return required by the commissioner shall accompany the
49 payment of tax. If no tax is due, the return required by the
50 commissioner shall be completed and filed on or before the last
51 day of the month.

52 (2) The tax due under this article comprising the variable
53 component of the tax due under article fourteen-c of this chapter
54 on alternative fuel, is due and shall be collected and remitted at
55 the time the tax imposed by section five, article fourteen-c of this
56 chapter is due, collected and remitted.

57 (e) *Compliance.* – To facilitate ease of administration and
58 compliance by taxpayers, the Tax Commissioner shall require
59 persons liable for the tax imposed by this article on sales of
60 motor fuel to file a combined return and make a combined
61 payment of the tax due under this article on sales of motor fuel
62 and the tax due under article fourteen-c of this chapter on motor
63 fuel. In order to encourage use of a combined return each month
64 and the making of a single payment each month for both taxes,
65 the due date of the return and tax due under article fourteen-c of
66 this chapter is the last day of each month notwithstanding any
67 provision in said article to the contrary. The Tax Commissioner
68 may prescribe reporting and payment requirements for tax due
69 under this article on alternative fuel which accommodate the due

70 dates and requirements prescribed in this article and article
71 fourteen-c of this chapter, either under a separate return and
72 payment or a combined return and payment, within the
73 discretion of the Tax Commissioner.

74 (f) *Dedication of tax.* – All tax collected under the provisions
75 of this section, after deducting the amount of refunds lawfully
76 paid, shall be deposited in the road fund in the State Treasurer’s
77 office and used only for the purpose of construction,
78 reconstruction, maintenance and repair of highways and payment
79 of principal and interest on state bonds issued for highway
80 purposes. Notwithstanding any provision to the contrary, tax
81 collected on the sale of aviation fuel after deducting the amount
82 of refunds lawfully paid shall be deposited in the State
83 Treasurer’s office and transferred to the State Aeronautical
84 Commission to be used for the purpose of matching federal
85 funds available for the reconstruction, maintenance and repair of
86 public airports and airport runways.

87 (g) *Construction.* – This section does not tax a sale of motor
88 fuel which this state is prohibited from taxing under the
89 constitution of this state or the constitution or laws of the United
90 States.

91 (h) *Effective date.* – The provisions of this section take effect
92 on January 1, 2004. The provisions of this section enacted during
93 the 2007 legislative session take effect on January 1, 2008. The
94 provisions of this section enacted during the 2013 regular
95 legislative session take effect on January 1, 2014.

ARTICLE 15A. USE TAX.

§11-15A-13a. Tax on motor fuel effective January 1, 2004.

1 (a) *Imposition of tax.* –

2 (1) *On deliveries in this state.* – Effective January 1, 2004,
3 motor fuel furnished or delivered within this state which is

4 subject to the flat rate of the tax imposed by section five, article
5 fourteen-c of this chapter is subject to the tax imposed by this
6 article which comprises the variable component of the tax
7 imposed by section five, article fourteen-c, and shall be collected
8 and remitted at the time the tax imposed by section five, article
9 fourteen-c is remitted. The amount of tax due under this article
10 shall not be less than five percent of the average wholesale price
11 of motor fuel as determined in accordance with said section five,
12 article fourteen-c.

13 (2) *On purchases out-of-state subject to motor fuel tax.* –
14 Effective January 1, 2004, an excise tax is imposed on the
15 importation into this state of motor fuel purchased outside this
16 state when the purchase is subject to the flat rate of the tax
17 imposed by section five, article fourteen-c of this chapter. The
18 rate of the tax due under this article shall not be less than five
19 percent of the average wholesale price of the motor fuel, as
20 determined in accordance with said section five, article
21 fourteen-c. The motor fuel subject to the tax imposed by this
22 article comprises the variable component of the tax imposed by
23 section five, article fourteen-c, and shall be collected and
24 remitted by the seller at the time the seller remits the tax
25 imposed by the said section five, article fourteen-c.

26 (3) *On other purchases out-of-state.* – An excise tax is
27 imposed on the use or consumption in this state of motor fuel
28 purchased outside this state at the rate of five percent of the
29 average wholesale price of the motor fuel, as determined in
30 accordance with section five, article fourteen-c of this chapter.
31 Motor fuel contained in the fuel supply tank of a motor vehicle
32 that is not a motor carrier is not taxable except that motor fuel
33 imported in the fuel supply tank or auxiliary tank of construction
34 equipment, mining equipment, track maintenance equipment or
35 other similar equipment, is taxed in the same manner as that in
36 the fuel supply tank of a motor carrier.

37 (4) *On use of alternative fuel.* – Effective January 1, 2014,
38 an excise tax is imposed on alternative fuel used within this state
39 which is subject to the flat rate of the tax imposed by section
40 five, article fourteen-c of this chapter. Alternative fuel is subject
41 to the tax imposed by this article and comprises the variable
42 component of the tax imposed by the section five, article
43 fourteen-c of this chapter and shall be collected and remitted at
44 the time the tax imposed by section five, article fourteen-c of this
45 chapter is remitted. The amount of tax due under this article shall
46 not be less than five percent of the average wholesale price of
47 alternative fuel as determined in accordance with section five,
48 article fourteen-c of this chapter.

49 (b) *Definitions.* – For purposes of this article, the terms
50 “gasoline” and “special fuel” are defined as provided in section
51 two, article fourteen-c of this chapter. Other terms used in this
52 section have the same meaning as when used in a similar context
53 in article fourteen-c of this chapter.

54 (c) *Computation of tax due from motor carriers.* – Every
55 person who operates or causes to be operated a motor carrier in
56 this state shall pay the tax imposed by this section on the average
57 wholesale price of all gallons or equivalent gallons of motor fuel
58 used in the operation of a motor carrier within this state, under
59 the following rules:

60 (1) The total amount of motor fuel used in the operation of
61 the motor carrier within this state is that proportion of the total
62 amount of motor fuel used in a motor carrier’s operations within
63 and without this state, that the total number of miles traveled
64 within this state bears to the total number of miles traveled
65 within and without this state.

66 (2) A motor carrier shall first determine the gross amount of
67 tax due under this section on the average wholesale value,
68 determined under section five, article fourteen-c of this chapter,

69 of motor fuel used in the operation of the motor carrier within
70 this state during the preceding quarter, as if all gasoline and
71 special fuel had been purchased outside this state.

72 (3) Next, the taxpayer shall determine the total tax paid
73 under article fifteen of this chapter on all motor fuel purchased
74 in this state for use in the operation of the motor carrier.

75 (4) The difference between (2) and (3) is the amount of tax
76 due under this article when (2) is greater than (3), or the amount
77 to be refunded or credited to the motor carrier when (3) is greater
78 than (2), which refund or credit is allowed in the same manner
79 and under the same conditions as a refund or credit is allowed
80 for the tax imposed by article fourteen-a of this chapter.

81 (d) *Return and payment of tax.* — Tax due under this article
82 on the uses or consumption in this state of motor fuel shall be
83 paid by each taxpayer on or before January 25, April 25, July 25
84 and October 25 of each year, notwithstanding any provision of
85 this article to the contrary, by check, bank draft, certified check
86 or money order, payable to the Tax Commissioner, for the
87 amount of tax due for the preceding quarter. The tax due under
88 this article comprising the variable component of the tax due
89 under article fourteen-c of this chapter is due on the last day of
90 the month. Every taxpayer shall make and file with his or her
91 remittance, a return showing the information the Tax
92 Commissioner requires. The tax due under this article
93 comprising the variable component of the tax due under article
94 fourteen-c of this chapter on alternative fuel, is due and shall be
95 collected and remitted at the time the tax imposed by section
96 five, article fourteen-c of this chapter is due, collected and
97 remitted.

98 (e) *Compliance.* — To facilitate ease of administration and
99 compliance by taxpayers, the Tax Commissioner shall require
100 motor carriers liable for the taxes imposed by this article on the

101 use of motor fuel in the operation of motor carriers within this
102 state, and the tax imposed by article fourteen-a of this chapter on
103 such gallons of motor fuel, to file a combined return and make
104 a combined payment of the tax due under this article and article
105 fourteen-a of this chapter on the fuel. In order to encourage use
106 of a combined return and the making of a single payment each
107 quarter for both taxes, the due date of the return and tax due
108 under article fourteen-a of this chapter is the last day of January,
109 April, July and October of each calendar year: Provided, That the
110 Tax Commissioner may prescribe reporting and payment
111 requirements for tax due under this article on alternative fuel
112 which accommodate the due dates and requirements prescribed
113 in this article and article fourteen-c of this chapter, either under
114 a separate return and payment or a combined return and
115 payment, within the discretion of the Tax Commissioner.

116 (f) *Dedication of tax to highways.* – Tax collected under the
117 provisions of this section, after deducting the amount of refunds
118 lawfully paid, shall be deposited in the Road Fund in the State
119 Treasurer’s office and used only for the purpose of construction,
120 reconstruction, maintenance and repair of highways and payment
121 of principal and interest on state bonds issued for highway
122 purposes.

123 (g) *Construction.* – The tax imposed by this article on the
124 use of motor fuel in this state does not tax motor fuel which the
125 state is prohibited from taxing under the Constitution of this state
126 or the Constitution or laws of the United States.

127 (h) *Effective date.* – The provisions of this section take effect
128 January 1, 2004. The provisions of this section enacted during
129 the 2013 legislative session take effect on January 1, 2014.

CHAPTER 193

**(Com. Sub. for H. B. 2754 - By Mr. Speaker, (Mr. Thompson)
and Delegate Armstead)
[By Request of the Executive]**

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §11-15A-1 of the Code of West Virginia, 1931, as amended, relating to expanding the definition of a “retailer engaging in business in this state” for purposes of sales and use taxes to include any retailer that is related to, or part of a unitary business with, a person, entity or business that is a subsidiary of the retailer, or is related to, or unitary with, the retailer as a related entity, a related member or part of a unitary business that meets one of four certain additional criteria; providing illustrative examples of the term “service” for purposes of the expanded definition; and providing effective date for the change of definition.

Be it enacted by the Legislature of West Virginia:

That § 11-15A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15A. USE TAX.

§11-15A-1. Definitions.

- 1 (a) *General.* — When used in this article and article fifteen
- 2 of this chapter, terms defined in subsection (b) of this section
- 3 have the meanings ascribed to them in this section, except in
- 4 those instances where a different meaning is provided in this

5 article or the context in which the word is used clearly indicates
6 that a different meaning is intended by the Legislature:

7 (b)(1) "Business" means any activity engaged in by any
8 person, or caused to be engaged in by any person, with the object
9 of direct or indirect economic gain, benefit or advantage, and
10 includes any purposeful revenue generating activity in this state;

11 (2) "Consumer" means any person purchasing tangible
12 personal property, custom software or a taxable service from a
13 retailer as defined in paragraph (7) of this subsection or from a
14 seller as defined in section two, article fifteen-b of this chapter;

15 (3) "Lease" includes rental, hire and license;

16 (4) "Person" includes any individual, firm, partnership, joint
17 venture, joint stock company, association, public or private
18 corporation, limited liability company, limited liability
19 partnership, cooperative, estate, trust, business trust, receiver,
20 executor, administrator, any other fiduciary, any representative
21 appointed by order of any court or otherwise acting on behalf of
22 others, or any other group or combination acting as a unit, and
23 the plural as well as the singular number;

24 (5) "Purchase" means any transfer, exchange or barter,
25 conditional or otherwise, in any manner or by any means
26 whatsoever, for a consideration;

27 (6) "Purchase price" means the measure subject to the tax
28 imposed by this article and has the same meaning as sales price;

29 (7) "Retailer" means and includes every person engaging in
30 the business of selling, leasing or renting tangible personal
31 property or custom software or furnishing a taxable service for
32 use within the meaning of this article, or in the business of
33 selling, at auction, tangible personal property or custom software
34 owned by the person or others for use in this state: *Provided,*

35 That when in the opinion of the Tax Commissioner it is
36 necessary for the efficient administration of this article to regard
37 any salespersons, representatives, truckers, peddlers or
38 canvassers as the agents of the dealers, distributors, supervisors,
39 employees or persons under whom they operate or from whom
40 they obtain the tangible personal property sold by them,
41 irrespective of whether they are making sales on their own
42 behalf or on behalf of the dealers, distributors, supervisors,
43 employers or persons, the Tax Commissioner may so regard
44 them and may regard the dealers, distributors, supervisors,
45 employers, or persons as retailers for purposes of this article;

46 (8) "Retailer engaging in business in this state" or any like
47 term, unless otherwise limited by federal statute, means and
48 includes, but is not limited to:

49 (A) Any retailer having or maintaining, occupying or using,
50 within this state, directly or by a subsidiary, an office,
51 distribution house, sales house, warehouse, or other place of
52 business, or any agent (by whatever name called) operating
53 within this state under the authority of the retailer or its
54 subsidiary, irrespective of whether the place of business or agent
55 is located here permanently or temporarily, or whether the
56 retailer or subsidiary is admitted to do business within this state
57 pursuant to article fifteen, chapter thirty-one-d of this code or
58 article fourteen, chapter thirty-one-e of this code; or

59 (B) On and after January 1, 2014, any retailer that is related
60 to, or part of a unitary business with, a person, entity or business
61 that, without regard to whether the retailer is admitted to do
62 business in this state pursuant to article fifteen, chapter thirty-
63 one-d of this code or article fourteen, chapter thirty-one-e of this
64 code, is a subsidiary of the retailer, or is related to, or unitary
65 with, the retailer as a related entity, a related member or part of
66 a unitary business, all as defined in article twenty four, section
67 three-a of this chapter;

68 (i) That, pursuant to an agreement with or in cooperation
69 with the related retailer, maintains an office, distribution house,
70 sales house, warehouse or other place of business in this state;

71 (ii) That performs services in this state in connection with
72 tangible personal property or services sold by the retailer, or any
73 related entity, related member or part of the unitary business;

74 (iii) That, by any agent, or representative (by whatever name
75 called), or employee, performs services in this state in
76 connection with tangible personal property or services sold by
77 the retailer, or any related entity, related member or part of the
78 unitary business; or

79 (iv) That directly, or through or by an agent, representative
80 or employee located in, or present in, this state, solicits business
81 in this state for or on behalf of the retailer, or any related entity,
82 related member or part of the unitary business.

83 (C) For purposes of paragraph (B) of this subdivision, the
84 term "service" means and includes, but is not limited to,
85 customer support services, help desk services, call center
86 services, repair services, engineering services, installation
87 service, assembly service, delivery service by means other than
88 common carrier or the United States Postal Service, technical
89 assistance services, the service of investigating, handling or
90 otherwise assisting in resolving customer issues or complaints
91 while in this state, the service of operating a mail order business
92 or telephone, Internet or other remote order business from
93 facilities located within this state, the service of operating a
94 website or Internet-based business from a location within the
95 state, or any other service.

96 (9) "Sale" means any transaction resulting in the purchase or
97 lease of tangible personal property, custom software or a taxable
98 service from a retailer;

99 (10) "Seller" means a retailer, and includes every person
100 selling or leasing tangible personal property or custom software
101 or furnishing a taxable service in a transaction that is subject to
102 the tax imposed by this article;

103 (11) "Streamlined sales and use tax agreement" or
104 "agreement," when used in this article, has the same meaning as
105 when used in article fifteen-b of this chapter, except when the
106 context in which the word agreement is used clearly indicates
107 that a different meaning is intended by the Legislature;

108 (12) "Tangible personal property" means personal property
109 that can be seen, weighed, measured, felt, or touched, or that is
110 in any manner perceptible to the senses. "Tangible personal
111 property" includes, but is not limited to, electricity, water, gas,
112 and prewritten computer software;

113 (13) "Tax commissioner" or "commissioner" means the
114 State Tax Commissioner, or his or her delegate. The term
115 "delegate" in the phrase "or his or her delegate," when used in
116 reference to the Tax Commissioner, means any officer or
117 employee of the State Tax Division duly authorized by the Tax
118 Commissioner directly, or indirectly by one or more
119 redelegations of authority, to perform the functions mentioned
120 or described in this article or rules promulgated for this article;

121 (14) "Taxpayer" includes any person within the meaning of
122 this section, who is subject to a tax imposed by this article,
123 whether acting for himself or herself or as a fiduciary; and

124 (15) "Use" means and includes:

125 (A) The exercise by any person of any right or power over
126 tangible personal property or custom software incident to the
127 ownership, possession or enjoyment of the property, or by any
128 transaction in which possession of or the exercise of any right or
129 power over tangible personal property, custom software or the

130 result of a taxable service is acquired for a consideration,
131 including any lease, rental or conditional sale of tangible
132 personal property or custom software; or

133 (B) The use or enjoyment in this state of the result of a
134 taxable service. As used in this subdivision, “enjoyment”
135 includes a purchaser’s right to direct the disposition of the
136 property or the use of the taxable service, whether or not the
137 purchaser has possession of the property.

138 The term “use” does not include the keeping, retaining or
139 exercising any right or power over tangible personal property,
140 custom software or the result of a taxable service for the purpose
141 of subsequently transporting it outside the state for use thereafter
142 solely outside this state.

143 (c) *Additional definitions.* — Other terms used in this article
144 are defined in articles fifteen and fifteen-b of this chapter, which
145 definitions are incorporated by reference into article fifteen-a.
146 Additionally, other sections of this article may define terms
147 primarily used in the section in which the term is defined.

CHAPTER 194

**(H. B. 2516 - By Mr. Speaker, (Mr. Thompson)
and Delegate Armstead)
[By Request of the Executive]**

[Passed April 12, 2013; in effect from passage.]

[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact § 11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal adjusted gross income and certain other terms used in the West

Virginia Personal Income Tax Act so the definitions conform with the Internal Revenue Code's definitions; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-21-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to income taxes, unless a different meaning is
4 clearly required. Any reference in this article to the laws of the
5 United States means the provisions of the Internal Revenue Code
6 of 1986, as amended, and any other provisions of the laws of the
7 United States that relate to the determination of income for
8 federal income tax purposes. All amendments made to the laws
9 of the United States after January 1, 2012, but prior to January
10 3, 2013, shall be given effect in determining the taxes imposed
11 by this article to the same extent those changes are allowed for
12 federal income tax purposes, whether the changes are retroactive
13 or prospective, but no amendment to the laws of the United
14 States made on or after January 3, 2013, shall be given any
15 effect.

16 (b) Medical savings accounts. — The term “taxable trust”
17 does not include a medical savings account established pursuant
18 to section twenty, article fifteen, chapter thirty-three of this code
19 or section fifteen, article sixteen of said chapter. Employer
20 contributions to a medical savings account established pursuant
21 to said sections are not wages for purposes of withholding under
22 section seventy-one of this article.

23 (c) Surtax. — The term “surtax” means the twenty percent
24 additional tax imposed on taxable withdrawals from a medical

25 savings account under section twenty, article fifteen, chapter
26 thirty-three of this code and the twenty percent additional tax
27 imposed on taxable withdrawals from a medical savings account
28 under section fifteen, article sixteen of said chapter which are
29 collected by the Tax Commissioner as tax collected under this
30 article.

31 (d) Effective date. — The amendments to this section
32 enacted in the year 2013 are retroactive to the extent allowable
33 under federal income tax law. With respect to taxable years that
34 began prior to January 1, 2014, the law in effect for each of those
35 years shall be fully preserved as to that year, except as provided
36 in this section.

37 (e) For purposes of the refundable credit allowed to a low
38 income senior citizen for property tax paid on his or her
39 homestead in this state, the term “laws of the United States” as
40 used in subsection (a) of this section means and includes the
41 term “low income” as defined in subsection (b), section twenty-
42 one of this article and as reflected in the poverty guidelines
43 updated periodically in the federal register by the U.S.
44 Department of Health and Human Services under the authority
45 of 42 U.S.C. §9902(2).

CHAPTER 195

(S. B. 183 - By Senators Kessler, (Mr. President) and M. Hall)
[By Request of the Executive]

[Passed April 9, 2013; in effect from passage.]
[Approved by the Governor on April 19, 2013.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of “federal taxable income” and certain other terms used in the West Virginia

Corporation Net Income Tax Act so the definitions conform with the Internal Revenue Code's definitions; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-24-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to federal income taxes, unless a different
4 meaning is clearly required by the context or by definition in this
5 article. Any reference in this article to the laws of the United
6 States means the provisions of the Internal Revenue Code of
7 1986, as amended, and any other provisions of the laws of the
8 United States that relate to the determination of income for
9 federal income tax purposes. All amendments made to the laws
10 of the United States after January 1, 2012, but prior to January
11 3, 2013, shall be given effect in determining the taxes imposed
12 by this article to the same extent those changes are allowed for
13 federal income tax purposes, whether the changes are retroactive
14 or prospective, but no amendment to the laws of the United
15 States made on or after January 3, 2013, shall be given any
16 effect.

17 (b) The term "Internal Revenue Code of 1986" means the
18 Internal Revenue Code of the United States enacted by the
19 federal Tax Reform Act of 1986 and includes the provisions of
20 law formerly known as the Internal Revenue Code of 1954, as
21 amended, and in effect when the federal Tax Reform Act of 1986
22 was enacted that were not amended or repealed by the federal
23 Tax Reform Act of 1986. Except when inappropriate, any
24 reference in any law, executive order or other document:

25 (1) To the Internal Revenue Code of 1954 includes a
26 reference to the Internal Revenue Code of 1986; and

27 (2) To the Internal Revenue Code of 1986 includes a
28 reference to the provisions of law formerly known as the Internal
29 Revenue Code of 1954.

30 (c) Effective date. – The amendments to this section enacted
31 in the year 2013 are retroactive to the extent allowable under
32 federal income tax law. With respect to taxable years that began
33 prior to January 1, 2014, the law in effect for each of those years
34 shall be fully preserved as to that year, except as provided in this
35 section.

CHAPTER 196

**(Com. Sub. for H. B. 2519 - By Mr. Speaker, (Mr. Thompson)
and Delegate Armstead)**

[Passed April 12, 2013; in effect from passage.]

[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact § 11-24-43a of the Code of West Virginia, 1931, as amended; to amend and reenact § 31-15A-16 of said code; and to amend and reenact § 33-20F-4 of said code, all relating to reallocation and repatriation of certain funds to the General Revenue Fund; eliminating the required payments into the Special Railroad and Intermodal Enhancement Fund for fiscal year 2014; reducing the amount deposited annually to the credit of the West Virginia Infrastructure General Obligation Debt Service Fund, subject to certain limitations, conditions and constraints; eliminating provisions regarding a loan from the Tobacco Settlement Medical Trust Fund to the Physician's Mutual Insurance Company; eliminating the requirement that certain taxes

imposed upon medical malpractice insurance premiums to be paid into the Revenue Shortfall Reserve Fund; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-24-43a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31-15A-16 of said code be amended and reenacted; and that §33-20F-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-43a. Dedication of tax proceeds to railways.

1 (a) Beginning January 1, 2008, there is dedicated an annual
2 amount of up to \$4,300,000 from annual collections of the tax
3 imposed by this article for the purpose of construction,
4 reconstruction, maintenance and repair of railways, the
5 construction of railway-related structures and payment of
6 principal and interest on state bonds issued for railway purposes,
7 as approved by the West Virginia Public Port Authority.

8 (b) For purposes of administering the deposits required by
9 this subdivision, after December 31, 2007, from the taxes
10 imposed by this section and paid to the Tax Commissioner in
11 each quarter of the year, after deducting the amount of any
12 refunds lawfully paid and any administrative costs authorized by
13 this code, the Tax Commissioner shall pay into the Special
14 Railroad and Intermodal Enhancement Fund provided in section
15 seven-a, article sixteen-b, chapter seventeen of this code an
16 amount equal to at least \$1,075,000. In any quarter where the
17 collections are less than the amount required to be paid into the
18 Special Railroad and Intermodal Enhancement Fund, or where

19 the total amount paid in any year will be less than \$4,300,000,
20 the difference shall be paid from amounts available from
21 collections in succeeding quarters until paid in full.
22 Notwithstanding any provision of this section to the contrary, the
23 total amount to be deposited into the Special Railroad and
24 Intermodal Enhancement Fund for 2013 may not exceed
25 \$2,150,000: *Provided*, That no deposits shall be made into the
26 Special Railroad and Intermodal Enhancement Fund during the
27 fiscal year 2014.

CHAPTER 31. CORPORATIONS.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-16. Dedication of severance tax proceeds.

1 (a) There shall be dedicated an annual amount from the
2 collections of the tax collected pursuant to article thirteen-a,
3 chapter eleven of this code for the construction, extension,
4 expansion, rehabilitation, repair and improvement of water
5 supply and sewage treatment systems and for the acquisition,
6 preparation, construction and improvement of sites for economic
7 development in this state as provided in this article.

8 (b) Notwithstanding any other provision of this code to the
9 contrary, beginning on July 1, 1995, the first \$16 million of the
10 tax collected pursuant to article thirteen-a, chapter eleven of this
11 code shall be deposited to the credit of the West Virginia
12 Infrastructure General Obligation Debt Service Fund created
13 pursuant to section three, article fifteen-b of this chapter:
14 *Provided*, That beginning on July 1, 1998, the first \$24 million
15 of the tax annually collected pursuant to article thirteen-a of this
16 code shall be deposited to the credit of the West Virginia
17 Infrastructure General Obligation Debt Service Fund created
18 pursuant to section three, article fifteen-b of this chapter:

19 *Provided, however,* That subject to the conditions, limitations,
20 exclusions and constraints prescribed by subsection (c) of this
21 section, beginning on July 1, 2013, the amount deposited under
22 this subsection to the credit of the West Virginia Infrastructure
23 General Obligation Debt Service Fund created pursuant to
24 section three, article fifteen-b of this chapter shall be the first
25 \$23 million of the tax annually collected pursuant to article
26 thirteen-a, chapter eleven of this code.

27 (c) Notwithstanding any provision of subsection (b) of this
28 section to the contrary: (1) None of the collections from the tax
29 imposed pursuant to section six, article thirteen-a, chapter eleven
30 of this code shall be so dedicated or deposited; and (2) the
31 portion of the tax imposed by article thirteen-a, chapter eleven
32 and dedicated for purposes of Medicaid and the Division of
33 Forestry pursuant to section twenty-a of said article thirteen-a
34 shall remain dedicated for the purposes set forth in that section
35 twenty-a.

36 (d) On or before May 1 of each year, commencing May 1,
37 1995, the council, by resolution, shall certify to the Treasurer
38 and the Water Development Authority the principal and interest
39 coverage ratio and amount for the following fiscal year on any
40 infrastructure general obligation bonds issued pursuant to the
41 provisions of article fifteen-b of this chapter.

CHAPTER 33. INSURANCE.

ARTICLE 20F. PHYSICIANS' MUTUAL INSURANCE COMPANY.

§33-20F-4. Authorization for creation of company; requirements and limitations.

1 (a) Subject to the provisions of this article, a physicians'
2 mutual insurance company may be created as a domestic,

3 private, nonstock, nonprofit corporation. As an incentive for its
4 creation, the company may be eligible for funds from the
5 Legislature in accordance with the provisions of section seven of
6 this article. The company must remain for the duration of its
7 existence a domestic mutual insurance company owned by its
8 policyholders and may not be converted into a stock corporation,
9 a for-profit corporation or any other entity not owned by its
10 policyholders. The company may not declare any dividend to its
11 policyholders; sell, assign or transfer substantial assets of the
12 company; or write coverage outside this state, except for
13 counties adjoining this state, until after any and all debts owed
14 by the company to the state have been fully paid.

15 (b) For the duration of its existence, the company is not and
16 may not be considered a department, unit, agency, or
17 instrumentality of the state for any purpose. All debts, claims,
18 obligations, and liabilities of the company, whenever incurred,
19 shall be the debts, claims, obligations, and liabilities of the
20 company only and not of the state or of any department, unit,
21 agency, instrumentality, officer or employee of the state.

22 (c) The moneys of the company are not and may not be
23 considered part of the General Revenue Fund of the state. The
24 debts, claims, obligations, and liabilities of the company are not
25 and may not be considered a debt of the state or a pledge of the
26 credit of the state.

27 (d) The company is not subject to provisions of article nine-
28 a, chapter six of this code or the provisions of article one,
29 chapter twenty-nine-b of this code.

30 (e) All premiums collected by the company are subject to the
31 premium taxes, additional premium taxes, additional fire and
32 casualty insurance premium taxes and surcharges contained in
33 sections fourteen, fourteen-a, fourteen-d and thirty-three, article
34 three of this chapter.

35 (f) *Effective Date* - The changes to this section adopted in
36 2013 are effective and apply on and after July 1, 2013.

CHAPTER 197

(Com. Sub. for S. B. 195 - Senators Stollings, Jenkins,
Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Tucker,
Yost, Boley, M. Hall and Beach)

[Passed April 12, 2013; in effect July 1, 2013.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §11-27-38 of the Code of West Virginia, 1931, as amended, relating generally to health care provider taxes; modifying the expiration date for tax rate on eligible acute care hospitals; changing the tax rate on eligible acute care hospitals; and providing for disbursement of any funds remaining in the Eligible Acute Care Provider Enhancement Account.

Be it enacted by the Legislature of West Virginia:

That §11-27-38 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-38. Contingent increase of tax rate on certain eligible acute care hospitals.

1 (a) In addition to the rate of the tax imposed by sections nine
2 and fifteen of this article on providers of inpatient and outpatient
3 hospital services, there shall be imposed on certain eligible acute
4 care hospitals an additional tax of forty-five one hundredths of
5 one percent on the gross receipts received or receivable by

6 eligible acute care hospitals that provide inpatient or outpatient
7 hospital services in this state through a Medicaid upper payment
8 limit program. For purposes of this section, the term “eligible
9 acute care hospital” means any inpatient or outpatient hospital
10 conducting business in this state that is not: (1) A state-owned or
11 -designated facility; (2) a nonstate, but government-owned
12 facility such as a county or city hospital; (3) a critical access
13 hospital, designated as a critical access hospital after meeting all
14 federal eligibility criteria; (4) a licensed free-standing psychiatric
15 or medical rehabilitation hospital; or (5) a licensed long-term
16 acute care hospital.

17 (b) The taxes imposed by this section may not be imposed or
18 collected until all of the following have occurred: (1) A state
19 plan amendment is developed by the Bureau of Medical
20 Services, as authorized by the Secretary of the Department of
21 Health and Human Resources; (2) the state plan amendment is
22 reviewed by the Medical Fund Services Advisory Council; (3) a
23 comment period of not less than thirty days for public comment
24 on the state plan amendment shall have passed; and (4) the state
25 plan amendment is approved by the Centers for Medicare and
26 Medicaid Services. The state plan amendment shall include all
27 of the following: (1) The provisions of the proposed upper
28 payment limit program or programs; (2) a state maintenance of
29 effort to maintain adequate Medicaid funding; and (3) a
30 provision that any other state Medicaid program will not
31 negatively impact the hospital upper payment limit payments.
32 The taxes imposed and collected may be imposed and collected
33 beginning on the earliest date permissible under applicable
34 federal law under the upper payment limit program, as
35 determined by the West Virginia Secretary of Health and Human
36 Resources.

37 (c) There is hereby created a special revenue account in the
38 State Treasury, designated the Medicaid State Share Fund. The
39 amount of taxes collected under this section, including any
40 interest, additions to tax and penalties collected under article ten

41 of this chapter, less the amount of allowable refunds, the amount
42 of any interest payable with respect to such refunds, and costs of
43 administration and collection, shall be deposited into the Special
44 Revenue Fund and shall not revert to general revenue. The Tax
45 Commissioner shall establish and maintain a separate account
46 and accounting for the funds collected under this section, in an
47 account to be designated as the Eligible Acute Care Provider
48 Enhancement Account. The amounts collected shall be
49 deposited, within fifteen days after receipt by the Tax
50 Commissioner, into the Eligible Acute Care Provider
51 Enhancement Account. Disbursements from the Eligible Acute
52 Care Provider Enhancement Account within the Medicaid State
53 Share Fund may only be used as set forth in this section.

54 (d) The imposition and collection of taxes imposed by this
55 section shall be suspended immediately upon the occurrence of
56 any of the following: (1) The effective date of any action by
57 Congress that would disqualify the taxes imposed by this section
58 from counting towards state Medicaid funds available to be used
59 to determine the federal financial participation; (2) the effective
60 date of any decision, enactment or other determination by the
61 Legislature or by any court, officer, department, agency of office
62 of state or federal government that has the effect of disqualifying
63 the tax from counting towards state Medicaid funds available to
64 be used to determine federal financial participation for Medicaid
65 matching funds, or creating for any reason a failure of the state
66 to use the assessment of the Medicaid program as described in
67 this section; and (3) the effective date of an appropriation for any
68 state fiscal year for hospital payments under the state Medicaid
69 program that is less than the amount appropriate for state fiscal
70 year ending June 30, 2011. Fifty percent of any funds remaining
71 in the Eligible Acute Care Provider Enhancement Account as of
72 June 30, 2013, shall be transferred to the West Virginia Medical
73 Services Fund. This transfer shall occur no later than September
74 30, 2013. These funds shall be used during state fiscal year 2014
75 at the discretion of the Bureau of Medical Services. The
76 remaining fifty percent of any funds in the Eligible Acute Care

77 Provider Enhancement Account as of June 30, 2013, shall
78 remain in the Eligible Acute Care Provider Enhancement
79 Account, and shall be used in state fiscal year 2014. If the
80 program expires on June 30, 2014, as set forth in subsection (f),
81 fifty percent of any funds remaining as of June 30, 2015, shall be
82 transferred on that date to the West Virginia Medical Services
83 Fund. This transfer shall occur only after state fiscal year 2014
84 fourth quarter tax collections and program payments. The
85 remaining fifty percent of the funds shall be distributed to the
86 eligible acute care providers no later than June 30, 2015. The
87 distribution of funds to the eligible acute care providers shall be
88 made in the same proportion as the taxes paid by the eligible
89 acute care providers into the Eligible Acute Care Provider
90 Enhancement Fund during state fiscal year 2014.

91 (e) The provisions of this section are retroactive and shall
92 become effective on the first day of the quarter in which the state
93 plan amendment is submitted.

94 (f) The tax imposed by this section shall expire on and after
95 June 30, 2014, unless otherwise extended by the Legislature.

CHAPTER 198

**(H. B. 2847 - By Delegates Boggs, Swartzmiller,
Ferro, Caputo and D. Poling)
[By Request of the Auditor]**

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §11A-1-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11A-1-7a, all relating to the

collection of delinquent real property and personal property taxes by county sheriffs.

Be it enacted by the Legislature of West Virginia:

That §11A-1-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §11A-1-7a, all to read as follows:

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

§11A-1-7. No collection of current real property taxes until delinquent real property taxes are paid.

1 The sheriff, in preparing his or her real property tax receipts
2 for any current year shall examine and compare them with the
3 delinquent list for the preceding year in his or her hands, and if
4 any tract is found to be delinquent for the preceding year, he or
5 she shall note the fact on his or her current receipts and shall
6 decline to receive current taxes on any land where it appears to
7 his or her office that a prior year's real property taxes are unpaid.
8 Acceptance of current taxes through oversight does not relieve
9 the owner of any land of the liability to pay prior taxes and
10 penalties imposed for nonpayment.

§11A-1-7a. No collection of current personal property taxes until delinquent personal property taxes are paid.

1 The sheriff, in preparing his or her personal property receipts
2 for any current year shall examine and compare them with the
3 delinquent list for the preceding year in his or her hands, and if
4 payment for any personal property is found to be delinquent for
5 the preceding year, he or she shall note the fact on his or her
6 current receipts and shall decline to receive current taxes on any
7 personal property where it appears to his or her office that a prior
8 year's personal property taxes are unpaid. Acceptance of current
9 taxes through oversight does not relieve the owner of any
10 personal property of the liability to pay prior taxes and penalties
11 imposed for nonpayment.

CHAPTER 199

(Com. Sub. for H. B. 2848 - By Delegates Boggs,
Swartzmiller, Ferro, Caputo and D. Poling)

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact § 11A-3-18, § 11A-3-22, § 11A-3-27, § 11A-3-28 and § 11A-3-55 of the Code of the West Virginia, 1931, as amended, all relating generally to the sale of tax liens and nonentered, escheated and waste and unappropriated lands; providing the process for requesting a refund after forfeiture of rights to a tax deed; clarifying deadlines for receipt of tax deeds and refunds related to failure to meet deadlines; modifying the requirements for petitioning to compel execution of a deed by the State Auditor; removing the provisions allowing judgment against the State Auditor for costs in the case of failure or refusal to execute a deed without reasonable cause; and providing for service of notice when mail is not deliverable to an address at the physical location of the property.

Be it enacted by the Legislature of West Virginia:

That § 11A-3-18, § 11A-3-22, § 11A-3-27, § 11A-3-28 and § 11A-3-55 of the Code of the West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-18. Limitations on tax certificates.

- 1 (a) No lien upon real property evidenced by a tax certificate
- 2 of sale issued by a sheriff on account of any delinquent property

3 taxes may remain a lien on the real property for a period longer
4 than eighteen months after the original issuance of the tax
5 certificate of sale.

6 (b) All rights of a purchaser to the property, to a lien on the
7 property, or to any other interest in the property, including, but
8 not limited to any right to a tax deed, shall be considered
9 forfeited and expired and no tax deed is to be issued on any tax
10 sale evidenced by a tax certificate of sale where the certificate
11 has ceased to be a lien pursuant to the provisions of this section
12 and application for the tax deed, pursuant to the provisions of
13 section twenty-seven of this article, is not pending at the time of
14 the expiration of the limitation period provided in this section.

15 (c) Whenever a lien evidenced by a tax certificate of sale has
16 expired by reason of the provisions of this section, the State
17 Auditor shall immediately issue and record a certificate of
18 cancellation describing the real estate included in the certificate
19 of purchase or tax certificate and giving the date of cancellation
20 and the State Auditor shall also make proper entries in his or her
21 records. The State Auditor shall also present a copy of every
22 certificate of cancellation to the sheriff who shall enter it in the
23 sheriff's records and the certificate and the record are prima
24 facie evidence of the cancellation of the certificate of sale and of
25 the release of the lien of the certificate on the lands described in
26 the certificate. Failure to record the certificate of cancellation
27 does not extend the lien evidenced by the certificate of sale. The
28 sheriff and State Auditor are not entitled to any fees for the
29 issuing of the certificate of cancellation nor for the entries in
30 their books made under the provisions of this subsection.

31 (d) Whenever a purchaser has complied with the notice
32 requirements provided in section nineteen of this article, but has
33 failed to request a deed within the eighteen month deadline
34 provided in this section, thereby forfeiting all rights to a tax
35 deed, the purchaser may recover the amounts paid in excess of
36 the taxes owed and expenses incurred by the State Auditor in the

37 processing of the tax lien if, within thirty days of the expiration
38 of the lien, upon a showing of compliance with the provisions of
39 section nineteen of this article, the purchaser files with the State
40 Auditor a request in writing for the refund. A purchaser who fails
41 to file the request within the thirty day period forfeits all rights
42 to the refund.

§11A-3-22. Service of notice.

1 (a) As soon as the State Auditor has prepared the notice
2 provided in section twenty-one of this article, he or she shall
3 cause it to be served upon all persons named on the list
4 generated by the purchaser pursuant to the provisions of section
5 nineteen of this article.

6 (b) The notice shall be served upon all persons residing or
7 found in the state in the manner provided for serving process
8 commencing a civil action or by certified mail, return receipt
9 requested. The notice shall be served on or before the thirtieth
10 day following the request for the notice.

11 (c) If a person entitled to notice is a nonresident of this state,
12 whose address is known to the purchaser, he or she shall be
13 served at that address by certified mail, return receipt requested.

14 (d) If the address of a person entitled to notice, whether a
15 resident or nonresident of this state, is unknown to the purchaser
16 and cannot be discovered by due diligence on the part of the
17 purchaser, the notice shall be served by publication as a Class
18 III-0 legal advertisement in compliance with the provisions of
19 article three, chapter fifty-nine of this code and the publication
20 area for the publication shall be the county in which the real
21 estate is located. If service by publication is necessary,
22 publication shall be commenced when personal service is
23 required as set forth in this section and a copy of the notice shall
24 at the same time be sent by certified mail, return receipt
25 requested, to the last known address of the person to be served.
26 The return of service of the notice and the affidavit of

27 publication, if any, shall be in the manner provided for process
28 generally and shall be filed and preserved by the State Auditor
29 in his or her office, together with any return receipts for notices
30 sent by certified mail.

31 In addition to the other notice requirements set forth in this
32 section, if the real property subject to the tax lien was classified
33 as Class II property at the time of the assessment, at the same
34 time the State Auditor issues the required notices by certified
35 mail, the State Auditor shall forward a copy of the notice sent to
36 the delinquent taxpayer by first class mail, addressed to
37 "Occupant", to the physical mailing address for the subject
38 property. The physical mailing address for the subject property
39 shall be supplied by the purchaser of the tax lien pursuant to the
40 provisions of section nineteen of this article. Where the mail is
41 not deliverable to an address at the physical location of the
42 subject property, the copy of the notice shall be sent to any other
43 mailing address that exists to which the notice would be
44 delivered to an occupant of the subject property.

§11A-3-27. Deed to purchaser; record.

1 (a) If the real estate described in the notice is not redeemed
2 within the time specified in the notice, then from April 1 of the
3 second year following the sheriff's sale until the expiration of
4 the lien evidenced by a tax certificate of sale as provided in
5 section eighteen of this article, the State Auditor or his or her
6 deputy shall upon request of the purchaser make and deliver to
7 the clerk of the county commission, a quitclaim deed for the real
8 estate. The purchaser's right to a tax deed shall be forfeited if the
9 deed is not requested within the eighteen month period set forth
10 in section eighteen of this article. The deed shall provide in form
11 or effect as follows:

12 This deed made this _____ day of _____, 20 _____,
13 by and between _____, State Auditor, West
14 Virginia, (or by and between _____, a commissioner

15 appointed by the circuit court of _____ County, West
16 Virginia) grantor, and _____, purchaser, (or
17 _____, heir, devisee or assignee of
18 _____, purchaser), grantee, witnesseth,
19 that:

20 Whereas, In pursuance of the statutes in such case made and
21 provided, _____, Sheriff of _____
22 County, (or _____, deputy for _____,
23 Sheriff of _____ County), (or _____, collector
24 of _____ County), did, in the month of
25 _____, in the year 20____, sell the tax lien(s) on real
26 estate, hereinafter mentioned and described, for the taxes
27 delinquent thereon for the year (or years) 20____, and
28 _____, (here insert name of purchaser) for the sum of
29 \$_____, that being the amount of purchase money paid
30 to the sheriff, did become the purchaser of the tax lien(s) on such
31 real estate (or on _____ acres, part of the tract or land, or on
32 an undivided _____ interest in such real estate) which
33 was returned delinquent in the name of _____;
34 and

35 Whereas, The State Auditor has caused the notice to redeem
36 to be served on all persons required by law to be served
37 therewith; and

38 Whereas, The tax lien(s) on the real estate so purchased has
39 not been redeemed in the manner provided by law and the time
40 for redemption set in such notice has expired;

41 Now, therefore, the grantor, for and in consideration of the
42 premises and in pursuance of the statutes, doth grant unto
43 _____, grantee, his or her heirs and assigns forever,
44 the real estate on which the tax lien(s) so purchased existed,
45 situate in the county of _____, bounded and
46 described as follows: _____.

47 Witness the following signature: _____

48 _____ State Auditor.

49 (b) The State Auditor may not execute and deliver a deed
50 more than sixty days after the person entitled to the deed delivers
51 the same and requests the execution of the deed, except when
52 directed to do so under section twenty-eight of this article.

53 (c) For the execution of the deed and for all the recording
54 required by this section, a fee of \$50 and the recording and
55 transfer tax expenses shall be charged, to be paid by the grantee
56 upon delivery of the deed. The deed, when duly acknowledged
57 or proven, shall be recorded by the clerk of the county
58 commission in the deed book in the clerk's office, together with
59 any assignment from the purchaser, if one was made, the notice
60 to redeem, the return of service of the notice, the affidavit of
61 publication, if the notice was served by publication, and any
62 return receipts for notices sent by certified mail.

63 (d) The State Auditor shall appoint employees of his or her
64 office to act as his or her designee to effect the purposes of this
65 section.

§11A-3-28. Compelling service of notice or execution of deed.

1 (a) If the State Auditor fails or refuses to prepare and serve
2 the notice to redeem as required in sections twenty-one and
3 twenty-two of this article, the person requesting the notice may,
4 at any time within two weeks after discovery of the failure or
5 refusal, but in no event later than sixty days following the date
6 the person requested that notice be prepared and served, apply by
7 petition to the circuit court of the county for an order compelling
8 the State Auditor to prepare and serve the notice or appointing
9 a commissioner to do so. If the person requesting the notice fails
10 to make application within the time allowed, he or she shall lose
11 his or her right to the notice, but his or her rights against the
12 State Auditor under the provisions of section sixty-seven of this
13 article shall not be affected. Notice given pursuant to an order of

14 the court or judge shall be as valid for all purposes as if given
15 within the time required by section twenty-two of this article.

16 (b) If the State Auditor fails or refuses to execute the deed as
17 required in section twenty-seven of this article to a purchaser
18 who has requested the deed within the period required by said
19 section twenty-seven, the person requesting the deed may, at any
20 time after such failure or refusal, but not more than six months
21 after his or her right to the deed accrued, upon proof that the
22 purchaser requested the deed within the period required by said
23 section twenty-seven, apply by petition to the circuit court of the
24 county for an order compelling the State Auditor to execute the
25 deed or appointing a commissioner to do so. If the person
26 requesting the deed fails to prove compliance with the
27 limitations period set forth in section twenty-seven of this article
28 or fails to make an application within the time allowed, he or she
29 shall lose his or her right to the deed. Any deed executed
30 pursuant to an order of the court or judge shall have the same
31 force and effect as if executed and delivered by the State Auditor
32 within the time specified in section twenty-seven of this article.

33 (c) Ten days' written notice of every application must be
34 given to the State Auditor. If, upon the hearing of the
35 application, the court or judge is of the opinion that the applicant
36 is not entitled to the notice or deed requested, the petition shall
37 be dismissed at his or her costs; but if the court or judge is of the
38 opinion that he or she is entitled to the notice or deed, then, upon
39 his or her deposit with the clerk of the circuit court of a sum
40 sufficient to cover the costs of preparing and serving the notice,
41 unless a deposit has already been made with the State Auditor,
42 an order shall be made by the court or judge directing the State
43 Auditor to prepare and serve the notice or execute the deed, or
44 appointing a commissioner for the purpose, as the court or judge
45 shall determine.

46 (d) Any commissioner appointed under the provisions of this
47 section shall be subject to the same liabilities as are provided for

48 the State Auditor. For the preparation of the notice to redeem, he
49 or she shall be entitled to the same fee as is provided for the
50 State Auditor. For the execution of the deed, he or she shall also
51 be entitled to a fee of \$50 and the recording and transfer
52 expenses, to be paid by the grantee upon delivery of the deed.

§1 1A-3-55. Service of notice.

1 As soon as the deputy commissioner has prepared the notice
2 provided for in section fifty-four of this article, he shall cause it
3 to be served upon all persons named on the list generated by the
4 purchaser pursuant to the provisions of section fifty-two of this
5 article. Such notice shall be mailed and, if necessary, published
6 at least thirty days prior to the first day a deed may be issued
7 following the deputy commissioner's sale.

8 The notice shall be served upon all such persons residing or
9 found in the state in the manner provided for serving process
10 commencing a civil action or by certified mail, return receipt
11 requested. The notice shall be served on or before the thirtieth
12 day following the request for such notice.

13 If any person entitled to notice is a nonresident of this state,
14 whose address is known to the purchaser, he shall be served at
15 such address by certified mail, return receipt requested.

16 If the address of any person entitled to notice, whether a
17 resident or nonresident of this state, is unknown to the purchaser
18 and cannot be discovered by due diligence on the part of the
19 purchaser, the notice shall be served by publication as a Class
20 III-0 legal advertisement in compliance with the provisions of
21 article three, chapter fifty-nine of this code, and the publication
22 area for such publication shall be the county in which such real
23 estate is located. If service by publication is necessary,
24 publication shall be commenced when personal service is
25 required as set forth above, and a copy of the notice shall at the
26 same time be sent by certified mail, return receipt requested, to
27 the last known address of the person to be served. The return of

28 service of such notice, and the affidavit of publication, if any,
29 shall be in the manner provided for process generally and shall
30 be filed and preserved by the auditor in his office, together with
31 any return receipts for notices sent by certified mail.

32 In addition to the other notice requirements set forth in this
33 section, if the real property subject to the tax lien was classified
34 as Class II property at the time of the assessment, at the same
35 time the deputy commissioner issues the required notices by
36 certified mail, the deputy commissioner shall forward a copy of
37 the notice sent to the delinquent taxpayer by first class mail,
38 addressed to "Occupant", to the physical mailing address for the
39 subject property. The physical mailing address for the subject
40 property shall be supplied by the purchaser of the property,
41 pursuant to the provisions of section fifty-two of this article.
42 Where the mail is not deliverable to an address at the physical
43 location of the subject property, the copy of the notice shall be
44 sent to any other mailing address that exists to which the notice
45 would be delivered to an occupant of the subject property.

CHAPTER 200

(Com. Sub. for S. B. 630 - By Senator Unger)

[Passed April 13, 2013; in effect from passage.]

[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §5A-6-4a of the Code of West Virginia, 1931, as amended, relating to duties of the Chief Technology Officer with regard to security of government information; adding the Division of Protective Services and the West Virginia Intelligence Fusion Center to the list of agencies exempted from the control of the Chief Technology Officer; and

adding the Treasurer to the list of officers whose responsibilities cannot be infringed upon by the Chief Technology Officer.

Be it enacted by the Legislature of West Virginia:

That §5A-6-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-4a. Duties of the Chief Technology Officer relating to security of government information.

1 (a) To ensure the security of state government information
2 and the data communications infrastructure from unauthorized
3 uses, intrusions or other security threats, the Chief Technology
4 Officer is authorized to develop policies, procedures, standards
5 and legislative rules. At a minimum, these policies, procedures
6 and standards shall identify and require the adoption of practices
7 to safeguard information systems, data and communications
8 infrastructures, as well as define the scope and regularity of
9 security audits and which bodies are authorized to conduct
10 security audits. The audits may include reviews of physical
11 security practices.

12 (b) (1) The Chief Technology Officer shall at least annually
13 perform security audits of all executive branch agencies
14 regarding the protection of government databases and data
15 communications.

16 (2) Security audits may include, but are not limited to, on-
17 site audits as well as reviews of all written security procedures
18 and documented practices.

19 (c) The Chief Technology Officer may contract with a
20 private firm or firms that specialize in conducting these audits.

21 (d) All public bodies subject to the audits required by this
22 section shall fully cooperate with the entity designated to
23 perform the audit.

24 (e) The Chief Technology Officer may direct specific
25 remediation actions to mitigate findings of insufficient
26 administrative, technical and physical controls necessary to
27 protect state government information or data communication
28 infrastructures.

29 (f) The Chief Technology Officer shall propose rules for
30 legislative approval in accordance with the provisions of chapter
31 twenty-nine-a of this code to minimize vulnerability to threats
32 and to regularly assess security risks, determine appropriate
33 security measures and perform security audits of government
34 information systems and data communications infrastructures.

35 (g) To ensure compliance with confidentiality restrictions
36 and other security guidelines applicable to state law-enforcement
37 agencies, emergency response personnel and emergency
38 management operations, the provisions of this section do not
39 apply to the West Virginia State Police, the Division of
40 Protective Services, the West Virginia Intelligence Fusion
41 Center or the Division of Homeland Security and Emergency
42 Management.

43 (h) The provisions of this section do not infringe upon the
44 responsibilities assigned to the state Comptroller, the Treasurer,
45 the Auditor or the Legislative Auditor, or other statutory
46 requirements.

47 (i) In consultation with the Adjutant General, Chairman of
48 the Public Service Commission, the Superintendent of the State
49 Police and the Director of the Division of Homeland Security
50 and Emergency Management, the Chief Technology Officer is
51 responsible for the development and maintenance of an

52 information systems disaster recovery system for the State of
53 West Virginia with redundant sites in two or more locations
54 isolated from reasonably perceived threats to the primary
55 operation of state government. The Chief Technology Officer
56 shall develop specifications, funding mechanisms and
57 participation requirements for all executive branch agencies to
58 protect the state's essential data, information systems and critical
59 government services in times of emergency, inoperativeness or
60 disaster. Each executive branch agency shall assist the Chief
61 Technology Officer in planning for its specific needs and
62 provide to the Chief Technology Officer any information or
63 access to information systems or equipment that may be required
64 in carrying out this purpose. No statewide or executive branch
65 agency procurement of disaster recovery services may be
66 initiated, let or extended without the expressed consent of the
67 Chief Technology Officer.

CHAPTER 201

(Com. Sub. for H. B. 3003 - By Delegate White)

[Passed April 10, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 22, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-9D-4a, relating generally to facilitating and enforcing compliance with escrow, certification and other requirements imposed on certain tobacco manufacturers that did not participate in the tobacco product manufacturers' Master Settlement Agreement; imposing bonding requirements on certain nonparticipating tobacco product manufacturers; and providing for forfeiture of bond for noncompliance.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-9D-4a, to read as follows:

**ARTICLE 9D. ENFORCEMENT OF STATUTES
IMPLEMENTING TOBACCO
MASTER SETTLEMENT
AGREEMENT.**

**§16-9D-4a. Listing of nonparticipating manufacturers in the West
Virginia Tobacco Directory; bonding requirement
for nonparticipating manufacturers newly qualified
or posing an elevated risk for noncompliance.**

1 (a) Notwithstanding any other provision of law to the
2 contrary, if a newly qualified nonparticipating manufacturer is
3 to be listed in the directory described in subsection (b), section
4 three of this article, or if the Attorney General reasonably
5 determines that a nonparticipating manufacturer who has filed a
6 certification pursuant to section three of this article poses an
7 elevated risk for noncompliance with its obligations under this
8 article or article nine-b of this chapter, neither the
9 nonparticipating manufacturer nor any of its brand families may
10 be included in the directory unless and until the nonparticipating
11 manufacturer has posted a bond in accordance with this section.

12 (b) The bond shall be posted by corporate surety located
13 within the United States in an amount equal to the greater of
14 \$25,000 or the amount of escrow the manufacturer, in either its
15 current or predecessor form, was required to deposit as a result
16 of its sales in the previous calendar year in West Virginia. The
17 bond shall be written in favor of the State of West Virginia and
18 shall be conditioned on the performance by the nonparticipating
19 manufacturer of all of its duties and obligations under this article
20 and article nine-b of this chapter during the year in which the
21 certification is filed and the next succeeding calendar year.

22 Duplicate originals of the bond shall be provided to the State Tax
23 Division and the Attorney General.

24 (c) A nonparticipating manufacturer may be considered to
25 pose an elevated risk for noncompliance with this section if:

26 (1) The nonparticipating manufacturer or any affiliate
27 thereof has underpaid an escrow obligation with respect to any
28 state that is a signatory to the Master Settlement Agreement at
29 any time during the calendar year or within the three preceding
30 calendar years unless:

31 (A) The manufacturer did not make underpayment
32 knowingly or recklessly and the manufacturer promptly cured
33 the underpayment within one hundred eighty days' notice of it;
34 or

35 (B) The underpayment or lack of payment is the subject of
36 a good-faith dispute as documented to the satisfaction of the
37 Attorney General and the underpayment is cured within one
38 hundred eighty days of entry of a final order establishing the
39 amount of the required escrow payment;

40 (2) Any state that is a signatory to the Master Settlement
41 Agreement has removed the manufacturer or its brands or brand
42 families or an affiliate or any of the affiliate's brands or brand
43 families from the directory for noncompliance with the state law
44 at any time during the calendar year or within the three
45 preceding calendar years; or

46 (3) Any state that is a signatory to the Master Settlement
47 Agreement has litigation pending against, or an unsatisfied
48 judgment against, the manufacturer or any affiliate thereof for
49 escrow or for penalties, costs, or attorney fees related to
50 noncompliance with state escrow laws.

51 (d) As used in this section, "newly qualified nonparticipating
52 manufacturer" means a nonparticipating manufacturer that has
53 not previously been listed in the directory in the three preceding

54 calendar years. The manufacturer may be required to post a bond
55 in accordance with this section for the first three years of their
56 listing, or for such longer time as the Attorney General may
57 require, if the manufacturer has been determined to pose an
58 elevated risk for noncompliance. Any other nonparticipating
59 manufacturer that has been determined to pose an elevated risk
60 for noncompliance shall be required to post a bond in accordance
61 with this section for three years, and shall be required to post a
62 bond for such further period of time as the Attorney General may
63 require, in accordance with this section, if the nonparticipating
64 manufacturer still poses an elevated risk at the end of the three-
65 year period.

66 (e) The posted bond shall be forfeited to the West Virginia
67 General Revenue Fund in the event that the manufacturer fails to
68 comply with its obligations under this article or article nine-b of
69 this chapter. The amount of the forfeiture shall be equal to the
70 delinquent escrow payments due at the time of forfeiture plus
71 any penalties assessed against the manufacturer based on its
72 failure to fulfill its responsibilities under this article and article
73 nine-b of this chapter.

CHAPTER 202

**(Com. Sub. for H. B. 2837 - By Delegates Boggs, White,
Reynolds, Hunt, Guthrie, Perdue, Pethtel, Williams,
Manypenny, R. Phillips and Skaff)**

[Passed April 13, 2013; in effect from passage.]
[Approved by the Governor on May 2, 2013.]

AN ACT to repeal §12-1-12c of the Code of West Virginia, 1931, as amended; to repeal §12-6B-1, §12-6B-2, §12-6B-3 and §12-6B-4 of said code; to amend and reenact §5-10B-13 of said code; to

amend said code by adding thereto a new section, designated §5-10B-14; to amend and reenact §12-1-3, §12-1-8 and §12-1-11 of said code; to amend and reenact §12-2-2 and §12-2-3 of said code; to amend and reenact §12-3A-3 of said code; to amend said code by adding thereto a new section, designated §12-4-17; to amend and reenact §12-5-4 of said code; to amend and reenact §12-6A-1, §12-6A-2, §12-6A-3, §12-6A-4, §12-6A-5, §12-6A-6 and §12-6A-7 of said code; to amend and reenact §12-6C-7 and §12-6C-9 of said code; to amend and reenact §33-3-14d of said code; and to amend and reenact §36-8-13 of said code, all relating to the State Treasurer's office; authorizing the deferred compensation plan to accept qualified domestic relations orders; authorizing Roth accounts within the deferred compensation plan in accordance with the Internal Revenue Code; authorizing financial institutions to offer products in addition to certificates of deposit; updating references to investing authorities to include the Board of Treasury Investments; raising the amount of eligible deposits from \$100,000 to the amount insured by a federal agency; providing requirements to be eligible depositories; providing for conflicts of interest for applicants and employees of the Treasurer's office in connection with financial institutions; authorizing depositories to submit reports in an electronic format; changing the requirement that deposits are required within 24 hours to one business day; changing the report to the Legislative Auditor for accounts outside the treasury from quarterly to an annual report; authorizing the Treasurer to determine the competitive bidding of banking, investment and related goods and services required for treasury operations; authorizing the Treasurer to develop procedures for storing, retaining and disposing of records for his or her office; ensuring the director of the division of archives and history receives records with historical value; clarifying that the Treasurer is responsible for earnings received on securities, not just interest; consolidating the debt capacity division into the debt management division; providing legislative findings to acknowledge the importance of monitoring the debt of the state

and its spending units; continuing division of debt management as the central information source for debt issued by the state and its spending units; defining debt to include debentures, lease purchases, mortgages, securitizations and other types of obligations with specific amounts owed and payable on demand or on determinable dates; defining debt impact report, moral obligation bond, net tax supported debt and tax supported debt; defining spending unit; eliminating requirement for developing a long-term debt plan; authorizing the division to continuously evaluating debt and debt service requirements of the state and its spending units; authorizing the division to issue a debt impact report if requested by the Governor, Senate President or House of Delegates Speaker and that the report shall not restrict the Governor, Legislature or spending unit; requiring the division to monitor continuing disclosure requirements and post-issuance compliance issues; eliminating requirement that the debt management division provide staff for the debt capacity division; providing for reporting by the division and the spending units; requiring the division to prepare and issue the debt capacity report; authorizing the Treasurer to promulgate the rules in certain circumstances; altering the bond required for the Board of Treasury Investments from \$50 million to at least \$10 million, as set by the board; updating language pertaining to rating agencies to nationally recognized statistical rating organizations; permitting pools with weighted average maturity or duration of 366 days or more to invest in investment grade corporate debt securities; authorizing investments in money market and other fixed income funds; providing that securities falling out of compliance with the code do not have to be sold if the investment manager and investment consultant recommend retention; satisfying amounts due to and from policemen's and firemen's pension and relief funds and the Teachers Retirement System; authorizing transfer of moneys from the Unclaimed Property Trust Fund for payment to policemen's and firemen's pension and relief funds.

Be it enacted by the Legislature of West Virginia:

That § 12-1-12c of the Code of West Virginia, 1931, as amended, be repealed; that §12-6B-1, §12-6B-2, §12-6B-3 and §12-6B-4 of said code be repealed; that §5-10B-13 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §5-10B-14; that §12-1-3, §12-1-8 and §12-1-11 of said code be amended and reenacted; that §12-2-2 and §12-2-3 of said code be amended and reenacted; that §12-3A-3 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §12-4-17; that §12-5-4 of said code be amended and reenacted; that §12-6A-1, §12-6A-2, §12-6A-3, §12-6A-4, §12-6A-5, §12-6A-6 and §12-6A-7 of said code be amended and reenacted; that §12-6C-7 and §12-6C-9 of said code be amended and reenacted; that §33-3-14d of said code be amended and reenacted; and that §36-8-13 of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND
AUTHORITY OF THE GOVERNOR, SECRETARY OF
STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC
WORKS, MISCELLANEOUS AGENCIES,
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

**ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED
COMPENSATION PLANS.**

**§5-10B-13. Moneys not subject to legal process; qualified
domestic relations orders.**

1 No account, benefit or right, created pursuant to this article,
2 accrued or accruing, is subject to execution, garnishment,
3 attachment, sale to satisfy a judgment or order, the operation of
4 bankruptcy or insolvency laws, or other process of law and shall
5 be unassignable, except that accounts, benefits and contributions
6 under the plan are subject to "qualified domestic relations
7 orders" as that term is defined in Internal Revenue Code
8 §414(p).

§5-10B-14. Roth accounts.

1 The Treasurer or any public employer may authorize
2 Roth accounts within the plan in accordance with the
3 Internal Revenue Code, including, without limitation,
4 conversions, deferrals, rollovers and transfers.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**ARTICLE 1. STATE DEPOSITORIES.****§12-1-3. Depositories for interest earning deposits; qualifications.**

1 Any state or national bank or any state or federal savings and
2 loan association in this state shall, upon request made to the
3 State Treasurer, be designated as an eligible depository for
4 interest earning deposits of state funds if such bank or state or
5 federal savings and loan association meets the requirements set
6 forth in this chapter. For purposes of this article, the term
7 “interest earning deposits” includes certificates of deposit or
8 other financial institution products. The State Treasurer shall
9 make and apportion such interest earning deposits and shall
10 prescribe the interest rates, terms and conditions of deposits, all
11 in accordance with the provisions of articles six and six-c of this
12 chapter: *Provided*, That state or federal savings and loan
13 associations insured by an agency of the federal government
14 shall be eligible for such deposits not in excess of the amount
15 insured by any agency of the federal government.

§12-1-8. Conflict of interest.

1 An employee or a person applying for a position with the
2 office of the Treasurer shall disclose to the Treasurer if he or she,
3 or his or her spouse, is an officer, director or employee of a
4 depository or owns greater than two percent of a depository. Any
5 employee of the office of the Treasurer who, or whose spouse,
6 is an officer, director or employee of a depository or owns
7 greater than two percent of a depository may not participate in

8 any selection of or in any contract negotiations with any
9 depository.

§12-1-11. Reports by depositories to Treasurer; discontinuance of depositories.

1 (a) Each depository of state funds shall at the end of each
2 quarter cause its president or designated officer to report to the
3 Treasurer the amount of state funds on deposit and the report
4 shall be verified by the affidavit of the officer making it. The
5 form and contents of the report shall be prescribed by the
6 Treasurer and may be in an electronic format.

7 (b) For the failure to file the report, or for other good cause,
8 the Treasurer may discontinue any depository as an eligible
9 depository and cause all state funds to be withdrawn from any
10 depository or depositories discontinued.

11 (c) When a depository is discontinued, the Treasurer shall
12 immediately notify such depository of its discontinuance, and
13 shall immediately withdraw by current checks or by transfer to
14 another depository or depositories the full amount of the deposits
15 held by any depository discontinued. After discontinuance, it
16 shall be unlawful for the Treasurer to deposit any state funds in
17 any depository discontinued until such time as the depository
18 may be reinstated to eligibility.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

1 (a) All officials and employees of the state authorized by
2 statute to accept moneys on behalf of the State of West Virginia
3 shall keep a daily itemized record of moneys received for deposit

4 in the State Treasury and shall deposit within one business day
5 with the State Treasurer all moneys received or collected by
6 them for or on behalf of the state for any purpose whatsoever.
7 The State Treasurer may grant an exception to the one business
8 day rule when circumstances make compliance difficult or
9 expensive. The State Treasurer may review the procedures and
10 methods used by officials and employees authorized to accept
11 moneys due the state and change the procedures and methods if
12 he or she determines it is in the best interest of the state:
13 *Provided.* That the state Treasurer may not review or amend the
14 procedures by which the Department of Revenue accepts moneys
15 due the state. The State Treasurer shall propose rules for
16 legislative approval, in accordance with the provisions of article
17 three, chapter twenty-nine-a of this code governing the
18 procedure for deposits. The official or employee making deposits
19 with the state Treasurer shall prepare deposit lists in the manner
20 and upon report forms prescribed by the state Treasurer in the
21 state accounting system. The State Treasurer shall review the
22 deposits in the state accounting system and forward the
23 information to the State Auditor and to the Secretary of Revenue.

24 (b) All moneys received by the state from appropriations
25 made by the Congress of the United States shall be recorded in
26 special fund accounts, in the State Treasury apart from the
27 general revenues of the state, and shall be expended in
28 accordance with the provisions of article eleven, chapter four of
29 this code. All moneys, other than federal funds, defined in
30 section two, article eleven, chapter four of this code, shall be
31 credited to the state fund and treated by the State Auditor and
32 State Treasurer as part of the general revenue of the state except
33 the following funds which shall be recorded in separate
34 accounts:

35 (1) All funds excluded by the provisions of section six,
36 article eleven, chapter four of this code;

37 (2) All funds derived from the sale of farm and dairy
38 products from farms operated by any spending unit of the state;

39 (3) All endowment funds, bequests, donations, executive
40 emergency funds and death and disability funds;

41 (4) All fees and funds collected at state educational
42 institutions for student activities;

43 (5) All funds derived from collections from dormitories,
44 boardinghouses, cafeterias and road camps;

45 (6) All moneys received from counties by institutions for the
46 deaf and blind on account of clothing for indigent pupils;

47 (7) All insurance collected on account of losses by fire and
48 refunds;

49 (8) All funds derived from bookstores and sales of blank
50 paper and stationery, and collections by the chief inspector of
51 public offices;

52 (9) All moneys collected and belonging to the capitol
53 building fund, state road fund, state road sinking fund, general
54 school fund, school fund, state fund (moneys belonging to
55 counties, districts and municipalities), state interest and sinking
56 funds, state compensation funds, the fund maintained by the
57 Public Service Commission for the investigation and supervision
58 of applications and all fees, money, interest or funds arising from
59 the sales of all permits and licenses to hunt, trap, fish or
60 otherwise hold or capture fish and wildlife resources and money
61 reimbursed and granted by the federal government for fish and
62 wildlife conservation; and

63 (10) All moneys collected or received under any act of the
64 Legislature providing that funds collected or received under the
65 act shall be used for specific purposes.

66 (c) All moneys, except as provided in subdivisions (1)
67 through (9), inclusive, subsection (b) of this section, shall be
68 paid into the State Treasury in the same manner as collections
69 not excepted and recorded in separate accounts for receipt and
70 expenditure for the purposes for which the moneys are
71 authorized to be collected by law: *Provided*, That amounts
72 collected pursuant to subdivisions (1) through (10), subsection
73 (b) of this section, which are found, from time to time, to exceed
74 funds needed for the purposes set forth in general law may be
75 transferred to other accounts or funds and redesignated for other
76 purposes by appropriation of the Legislature. The gross amount
77 collected in all cases shall be paid into the State Treasury.
78 Commissions, costs and expenses, including, without limitation,
79 amounts charged for use of bank, charge, credit or debit cards,
80 incurred in the collection process shall be paid from the gross
81 amount collected in the same manner as other payments are
82 made from the State Treasury.

83 (d) The State Treasurer may establish an imprest fund or
84 funds in the office of any state spending unit upon receipt of a
85 proper application. To implement this authority, the State
86 Treasurer shall propose rules for legislative approval in
87 accordance with the provisions of article three, chapter
88 twenty-nine-a of this code. The State Treasurer or his or her
89 designee shall annually audit all imprest funds and prepare a list
90 of the funds showing the location and amount as of fiscal year
91 end, retaining the list as a permanent record of the State
92 Treasurer until the Legislative Auditor has completed an audit of
93 the imprest funds of all agencies and institutions involved.

94 (e) The State Treasurer may develop and implement a
95 centralized receipts processing center. The State Treasurer may
96 request the transfer of equipment and personnel from appropriate
97 state agencies to the centralized receipts processing center in
98 order to implement the provisions of this section: *Provided*, That
99 the Governor or appropriate constitutional officer has authority

100 to authorize the transfer of equipment or personnel to the
101 centralized receipts processing center from the respective
102 agency.

§12-2-3. Deposit of moneys not due the State.

1 (a) All officials and employees of the State authorized to
2 accept moneys that the State Treasurer determines or that this
3 code specifies are not funds due the State pursuant to the
4 provisions of section two of this article shall deposit the moneys,
5 as soon as practicable, in the manner and in the depository
6 specified by the State Treasurer. The State Treasurer shall
7 prescribe the forms and procedures for depositing the moneys.

8 (b) Notwithstanding any provision of this code to the
9 contrary, including provisions stating funds collected are not
10 state funds and provisions authorizing a spending unit to have
11 one or more accounts outside the Treasury, a spending unit shall
12 comply with the State Treasurer's procedures for the receipt and
13 disbursement of moneys not due the state and obtain written
14 authorization from the State Treasurer before depositing any
15 moneys in an account outside the Treasury. Upon the State
16 Treasurer's written revocation of the authorization, the spending
17 unit shall deposit funds deposited in an account outside the
18 Treasury into the Treasury in the manner and in the depository
19 specified by the State Treasurer. The State Treasurer is the final
20 determining authority as to whether these funds are funds due or
21 not due the state pursuant to section two of this article.

22 (c) The State Treasurer shall provide the Legislative Auditor
23 with an annual report of all accounts authorized under this
24 section.

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

§12-3A-3. Financial electronic commerce.

1 (a) The State Auditor and the State Treasurer shall
2 implement electronic commerce capabilities for each of their
3 offices to facilitate the performance of their duties under this

4 code. The State Treasurer shall competitively bid the selection
5 of vendors needed to provide the necessary banking, investment
6 and related goods and services, and the provisions of article
7 one-b, chapter five, and articles three and seven, chapter five-a
8 of this code shall not apply, unless requested by the State
9 Treasurer.

10 (b) A document or a signature received, issued or used by
11 the Auditor or the Treasurer shall be considered an original and
12 may not be denied legal effect on the ground that it is in
13 electronic form.

14 (c) The Auditor or Treasurer may, in his or her discretion,
15 require documents filed with or submitted to his or her
16 respective office be filed or submitted in a prescribed electronic
17 format.

18 (d) The Auditor or Treasurer, in his or her discretion, may
19 waive:

20 (1) Any requirements for a document filed or submitted in
21 an electronic format; or

22 (2) Any requirements for the certification, notarization or
23 verification of a document filed or submitted in an electronic
24 format.

25 (e) The head of each spending unit is responsible for
26 adopting and implementing security procedures to ensure
27 adequate integrity, security, confidentiality and auditability of
28 the business transactions of his or her spending unit when
29 utilizing electronic commerce.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-17. Retention and disposal of Treasurer's records.

1 The Treasurer shall develop procedures for the storage,
2 retention and disposal of records filed with, submitted to or

3 created by the Treasurer's office. The procedures shall comply
4 with the requirements for state records, as defined in section
5 three, article eight, chapter five-a of this code, and for the
6 reproduction and preservation of essential state records, as
7 defined in section four, article eight, chapter five-a of this code.
8 Preservation duplicates, as defined in section three, article eight,
9 chapter five-a of this code, shall be maintained in an unalterable
10 readable electronic media in accordance with industry standards,
11 reviewed for accuracy and indexed, and shall have the same
12 force and effect as the original records whether the original
13 records are in existence or not. The procedures shall provide for
14 the maintenance of the confidentiality of the records and ensure
15 the director of the division of archives and history receives the
16 records the director identifies as having historic value. The
17 Treasurer shall purchase the equipment and supplies needed for
18 record retention as part of his or her electronic commerce
19 activities: *Provided*, That this section shall not limit the
20 responsibility of the Treasurer to provide all documents
21 necessary for the State Auditor, the Department of Revenue and
22 the State Tax Department to complete their duties.

ARTICLE 5. PUBLIC SECURITIES.

§12-5-4. Treasurer to keep accounts and make collections.

1 The Treasurer shall keep an accurate account of all securities
2 received by him or her and collect and account for earnings
3 received and the principal whenever it is due.

ARTICLE 6A. THE DEBT MANAGEMENT ACT

§12-6A-1. Short title.

1 This article shall be known and may be cited as "The Debt
2 Management Act".

§12-6A-2. Legislative findings and declaration of public necessity.

1 The Legislature hereby finds and declares that in order to
2 maintain the strong financial management of the state, to meet

3 the fiscal needs of state government and to facilitate financing
4 essential capital projects at the lowest possible cost to the
5 citizens of the state, the state must regularly monitor the amount
6 of debt issued by the state and its spending units, ensure the state
7 and its spending units meet all debt service requirements,
8 monitor the credit rating of the state and analyze the acceptance
9 of debt issued by the state and its spending units. The Legislature
10 further finds that in order to meet these important goals, the
11 Division of Debt Management needs to be continued.

§12-6A-3. Division of Debt Management continued; director.

1 (a) The Division of Debt Management is continued in the
2 office of the State Treasurer.

3 (b) The Division shall serve as a central information source
4 concerning the incurrence, recording and reporting of debt issued
5 by the state and its spending units, and shall prepare reports
6 pertaining to the capacity of the state and its spending units to
7 issue debt.

8 (c) The Treasurer shall appoint a director, qualified by
9 reason of exceptional training and experience in the field of
10 activities of his or her respective Division, and who shall serve
11 at the will and pleasure of the Treasurer.

§12-6A-4. Definitions.

1 For the purpose of this article:

2 “Debt” means bonds, notes, certificates of participation,
3 certificate transactions, capital leases, debentures, lease
4 purchases, mortgages, securitizations and all other forms of
5 securities and indebtedness obligations evidencing specific
6 amounts owed and payable on demand or on determinable dates.

7 “Debt impact report” means a report prepared by the division
8 which includes information pertaining to a proposed issuance of
9 debt by the state or its spending units.

10 “Division” means the Division of Debt Management.

11 “Moral obligation bond” means a debt obligation for which
12 the state or a spending unit has made a nonbinding covenant to
13 make up any deficiency in debt service.

14 “Net tax supported debt” means the amount of tax supported
15 debt less any applicable refundings, defeasances, escrow
16 accounts, reserve requirements and sinking funds.

17 “State” means the State of West Virginia.

18 “Spending unit” means a state department, agency, board,
19 commission, committee, authority or other entity of the state
20 with the power to issue and secure debt. Spending unit does not
21 include local political subdivisions.

22 “Tax-supported debt” means: (1) General obligation bonds
23 of the state; (2) moral obligation bonds of the state or a spending
24 unit; (3) capital leases, installment purchases, lease purchases,
25 mortgages, certificates of participation and any other similar
26 debt financing transaction extending beyond one year issued by
27 the state or its spending units; and (4) any other debt issued by
28 the state or a spending unit which is not self-supporting. Debt
29 issued by the West Virginia housing development fund,
30 economic development authority, hospital finance authority,
31 parkway authority, public energy authority, solid waste
32 management board and water development authority, with the
33 exception of debt secured by lottery revenues or secured by a
34 lease with the Secretary of Administration, is not tax-supported
35 debt.

§12-6A-5. Powers and duties.

1 The Division of Debt Management shall perform the
2 following functions and duties:

3 (1) Continuously evaluate the current and projected debt and
4 debt service requirements of the State and its spending units.

5 (2) Evaluate cash flow projections relative to proposed and
6 existing revenue bond issues.

7 (3) Issue a debt impact report if requested by the Governor,
8 the President of the Senate or the Speaker of the House of
9 Delegates. The Division may request any additional information
10 needed to issue a debt impact report. A debt impact report shall
11 in no way restrict the Governor, the Legislature or the spending
12 unit.

13 (4) Act as liaison with the Legislature on all debt matters,
14 including, but not limited to, new debt issues and the status of
15 debt issued by the State and its spending units.

16 (5) Assist the State and its spending units regarding the
17 issuance of debt if requested.

18 (6) Establish reporting requirements for the issuance of debt
19 by the State and its spending units pursuant to the provisions of
20 this article.

21 (7) Monitor continuing disclosure requirements and
22 post-issuance compliance issues with federal and state tax and
23 securities law, including, without limitation, arbitrage, rebate
24 and remedial measures.

25 (8) Make and execute contracts and other instruments and
26 pay the reasonable value of services or commodities rendered to
27 the division pursuant to those contracts.

28 (9) Contract, cooperate or join with any one or more other
29 governments or public agencies, with any political subdivision
30 of the State, or with the United States, to perform any
31 administrative service, activity or undertaking which the

32 contracting party is authorized by law to perform, charge for
33 providing services and expend any fees collected.

34 (10) Do all things necessary or convenient to effectuate the
35 intent of this article and to carry out its powers and functions.

§12-6A-6. Reporting.

1 (a) Within fifteen days following the end of each calendar
2 quarter, each state spending unit shall provide the division and
3 the Legislative Auditor, in the manner provided by this article
4 and in such form and detail as the State Treasurer may require,
5 a report including, but not limited to, the name of the state
6 spending unit, the amounts and types of debt incurred during the
7 calendar quarter and outstanding at the end of the calendar
8 quarter, the cost and expenses of incurring the debt, the maturity
9 date of each debt, the terms and conditions of the debt, the
10 current debt service on the debt, the interest rate on the debt, the
11 source of the proceeds utilized for repayment of the debt, the
12 amounts of repayment during the calendar quarter, the
13 repayment schedule and the security for the debt. A state
14 spending unit having no outstanding debt shall not be required
15 to provide the quarterly report but shall file an annual report, on
16 forms established by the Division of Debt Management:
17 *Provided*, That the state spending unit shall immediately notify
18 the Division of Debt Management of any change in the spending
19 unit's outstanding debt or financial condition.

20 (b) Not less than thirty days prior to a proposed offering of
21 debt by the state or a state spending unit, written notice of the
22 proposed offering and the terms thereof shall be given to the
23 Division by the state spending unit in the form as the Division
24 may require.

25 (c) Within thirty days after closing on an offering, the
26 responsible spending unit shall report to the division the

27 information pertaining to the offering required by the division in
28 the form the division may require.

29 (d) On or before January 31 and July 31 of each year, the
30 division shall prepare and issue a report of all debt of the State
31 and its spending units and of all proposed debt issuances of
32 which the division has received notice and shall furnish a copy
33 of the report to the Governor, the President of the Senate, the
34 Speaker of the House of Delegates, the members of the Joint
35 Committee on Government and Finance, the Legislative Auditor
36 and upon request to any other legislative committee and any
37 member of the Legislature. The report shall be kept available for
38 inspection by any citizen of the state. The division shall also
39 prepare updated reports of all debt of the state and its spending
40 units as of March 31 and September 30 each year, which shall be
41 available for inspection at the office of the state Treasurer within
42 thirty days of the end of the respective calendar quarter.

43 (e) On or before January 15 each year, the division shall
44 report to the Governor and to the Legislature on the capacity of
45 the state to issue additional debt. In preparing its annual review
46 and estimate, the division shall, at a minimum, consider:

47 (1) The amount of net tax supported debt outstanding and
48 debt authorized but not issued during the current and next fiscal
49 year and annually for the following ten fiscal years;

50 (2) Debt service requirements during the current and next
51 fiscal year and annually for the following ten fiscal years based
52 upon existing outstanding debt, previously authorized but
53 unissued debt and projected bond authorizations;

54 (3) Any information available from the budget office of the
55 department of revenue in connection with projected revenues and
56 anticipated capital expenditures projected for at least the next
57 five fiscal years;

58 (4) The amount of debt the state and its spending units may
59 prudently issue;

60 (5) What is needed to keep West Virginia within an average
61 to low range of nationally recognized debt limits;

62 (6) The debt ratios rating agencies and analysts use; and

63 (7) The effect of authorizations of new tax supported debt on
64 each of the considerations in this subsection.

§12-6A-7. Promulgation of rules.

1 The Treasurer shall propose rules for legislative approval
2 relating to the reporting requirements and duties under this
3 article in accordance with the provisions of article three, chapter
4 twenty-nine-a of this code.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§12-6C-7. Management and control of fund; officers; staff; fiduciary or surety bonds for directors; liability of directors.

1 (a) The management and control of the Consolidated Fund
2 is vested solely in the Board in accordance with the provisions
3 of this article.

4 (b) The State Treasurer is the chairperson of the Board. The
5 Board shall elect a vice chairperson. Annually, the directors shall
6 elect a secretary to keep a record of the proceedings of the Board
7 and provide any other duties required by the board. The board
8 may elect a person who is not a member of the board as
9 secretary.

10 (c) The board may use the staff of the State Treasurer,
11 employ personnel and contract with any person or entity needed
12 to perform the tasks related to operating the Consolidated Fund.

13 (d) The Board shall retain an internal auditor to report
14 directly to the Board and shall fix his or her compensation. As a
15 minimum qualification, the internal auditor shall be a certified
16 public accountant with at least three years' experience as an
17 auditor. The internal auditor shall develop an internal audit plan,
18 with board approval, for the testing of procedures, internal
19 controls and the security of transactions.

20 (e) The Board may retain one employee with a chartered
21 financial analyst designation or an employee who is a certified
22 treasury manager.

23 (f) Each director shall give a separate fiduciary or surety
24 bond from a surety company qualified to do business within this
25 State in a penalty amount of one million dollars for the faithful
26 performance of his or her duties as a director. The Board shall
27 purchase a blanket bond for the faithful performance of its duties
28 in the amount set by the board of at least \$10 million. The
29 amount of the blanket bond is in addition to the \$1 million
30 individual bond required of each director by the provisions of
31 this section. The Board may require a fiduciary or surety bond
32 from a surety company qualified to do business in this state for
33 any person who has charge of, or access to, any securities, funds
34 or other moneys held by the board and the amount of the
35 fiduciary or surety bond are fixed by the board. The premiums
36 payable on all fiduciary or surety bonds are expenses of the
37 board.

38 (g) The directors, employees of the Board and employees of
39 the State Treasurer performing work for or on behalf of the
40 Board are not liable personally, either jointly or severally, for
41 any debt or obligation created by the Board: *Provided*, That the
42 directors and employees of the Board are liable for acts of
43 misfeasance or gross negligence.

44 (h) The board is exempt from the provisions of article three,
45 chapter five-a, and sections seven and eleven, article three,

46 chapter twelve of this code. However, the board is subject to the
47 purchasing policies and procedures of the State Treasurer's
48 Office.

**§12-6C-9. Asset allocation; investment policies, authorized
investments; restrictions.**

1 (a) The Board shall develop, adopt, review or modify an
2 asset allocation plan for the Consolidated Fund at each annual
3 board meeting.

4 (b) The Board shall adopt, review, modify or cancel the
5 investment policy of each fund or pool created at each annual
6 board meeting. For each participant directed account authorized
7 by the State Treasurer, staff of the Board shall develop an
8 investment policy for the account and create the requested
9 account. The Board shall review all existing participant directed
10 accounts and investment policies at its annual meeting for
11 modification.

12 (c) The board shall consider the following when adopting,
13 reviewing, modifying or canceling investment policies:

14 (1) Preservation of capital;

15 (2) Risk tolerance;

16 (3) Credit standards;

17 (4) Diversification;

18 (5) Rate of return;

19 (6) Stability and turnover;

20 (7) Liquidity;

21 (8) Reasonable costs and fees;

- 22 (9) Permissible investments;
- 23 (10) Maturity ranges;
- 24 (11) Internal controls;
- 25 (12) Safekeeping and custody;
- 26 (13) Valuation methodologies;
- 27 (14) Calculation of earnings and yields;
- 28 (15) Performance benchmarks and evaluation; and
- 29 (16) Reporting.

30 (d) No security may be purchased by the board unless the
31 type of security is on a list approved at a board meeting. The
32 board shall review the list at its annual meeting.

33 (e) Notwithstanding the restrictions which are otherwise
34 provided by law with respect to the investment of funds, the
35 board and all participants, now and in the future, may invest
36 funds in these securities:

37 (1) Obligations of, or obligations that are insured as to
38 principal and interest by, the United States of America or any
39 agency or corporation thereof and obligations and securities of
40 the United States sponsored enterprises, including, without
41 limitation:

- 42 (i) United States Treasury;
- 43 (ii) Export-Import Bank of the United States;
- 44 (iii) Farmers Home Administration;
- 45 (iv) Federal Farm Credit Banks;

- 46 (v) Federal Home Loan Banks;
- 47 (vi) Federal Home Loan Mortgage Corporation;
- 48 (vii) Federal Land Banks;
- 49 (viii) Government National Mortgage Association;
- 50 (ix) Merchant Marine bonds; and
- 51 (x) Tennessee Valley Authority Obligations;
- 52 (2) Obligations of the Federal National Mortgage
53 Association;
- 54 (3) Commercial paper with one of the two highest
55 commercial paper credit ratings by a nationally recognized
56 statistical rating organization;
- 57 (4) Corporate debt rated in one of the six highest rating
58 categories by a nationally recognized statistical rating
59 organization;
- 60 (5) Corporate debt rated investment grade by a nationally
61 recognized statistical rating organization for pools with a
62 weighted average maturity or duration of at least three hundred
63 sixty-six days;
- 64 (6) State and local government, or any instrumentality or
65 agency thereof, securities with one of the three highest ratings by
66 a nationally recognized statistical rating organization;
- 67 (7) Repurchase agreements involving the purchase of United
68 States Treasury securities and repurchase agreements fully
69 collateralized by obligations of the United States government or
70 its agencies or instrumentalities;
- 71 (8) Reverse repurchase agreements involving the purchase
72 of United States Treasury securities and reverse repurchase

73 agreements fully collateralized by obligations of the United
74 States government or its agencies or instrumentalities;

75 (9) Asset-backed securities rated in the highest category by
76 a nationally recognized statistical rating organization;

77 (10) Certificates of deposit;

78 (11) Money market and other fixed income funds; and

79 (12) Investments in accordance with the Linked Deposit
80 Program, a program using financial institutions in West Virginia
81 to obtain certificates of deposit, loans approved by the
82 Legislature and any other programs authorized by the
83 Legislature.

84 (f) In addition to the restrictions and conditions contained in
85 this section:

86 (1) At no time shall more than seventy-five percent of the
87 Consolidated Fund be invested in any bond, note, debenture,
88 commercial paper or other evidence of indebtedness of any
89 private corporation or association;

90 (2) At no time shall more than five percent of the
91 Consolidated Fund be invested in securities issued by a single
92 private corporation or association; and

93 (3) At no time shall less than fifteen percent of the
94 Consolidated Fund be invested in any direct obligation of or
95 obligation guaranteed as to the payment of both principal and
96 interest by the United States of America.

97 (g) Securities purchased in compliance with this article that
98 become noncompliant may be retained upon recommendation of
99 the investment manager of the security and the board investment
100 consultant.

CHAPTER 33. INSURANCE**ARTICLE 3. LICENSING, FEES, AND TAXATION OF INSURANCE.****§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.**

1 (a) (1) For the purpose of providing additional revenue for
2 municipal policemen's and firemen's pension and relief funds
3 and the Teachers Retirement System Reserve Fund and for
4 volunteer and part-volunteer fire companies and departments,
5 there is hereby levied and imposed an additional premium tax
6 equal to one percent of taxable premiums for fire insurance and
7 casualty insurance policies. For purposes of this section, casualty
8 insurance does not include insurance on the life of a debtor
9 pursuant to or in connection with a specific loan or other credit
10 transaction or insurance on a debtor to provide indemnity for
11 payments becoming due on a specific loan or other credit
12 transaction while the debtor is disabled as defined in the policy.

13 (2) All moneys collected from this additional tax shall be
14 received by the commissioner and paid by him or her into a
15 special account in the State Treasury, designated the Municipal
16 Pensions and Protection Fund: *Provided*, That on or after
17 January 1, 2010, the commissioner shall pay ten percent of the
18 amount collected to the Teachers Retirement System Reserve
19 Fund created in section eighteen, article seven-a, chapter
20 eighteen of this code, twenty-five percent of the amount
21 collected to the Fire Protection Fund created in section
22 thirty-three of this article for allocation by the Treasurer to
23 volunteer and part-volunteer fire companies and departments and
24 sixty-five percent of the amount collected to the Municipal
25 Pensions and Protection Fund: *Provided, however*, That upon
26 notification by the Municipal Pensions Oversight Board pursuant
27 to the provisions of section eighteen-b, article twenty-two,

28 chapter eight of this code, on or after January 1, 2010, or as soon
29 thereafter as the Municipal Pensions Oversight Board is prepared
30 to receive the funds, sixty-five percent of the amount collected
31 by the commissioner shall be deposited in the Municipal
32 Pensions Security Fund created in section eighteen-b, article
33 twenty-two, chapter eight of this code. The net proceeds of this
34 tax after appropriation thereof by the Legislature is distributed
35 in accordance with the provisions of this section, except for
36 distribution from proceeds pursuant to subsection (d), section
37 eighteen-a, article twenty-two, chapter eight of this code.

38 (b) (1) Before the August 1 of each year, the treasurer of
39 each municipality in which a municipal policemen's or firemen's
40 pension and relief fund is established shall report to the State
41 Treasurer the average monthly number of members who worked
42 at least one hundred hours per month and the average monthly
43 number of retired members of municipal policemen's or
44 firemen's pension and relief fund or the Municipal Police
45 Officers and Firefighters Retirement System during the
46 preceding fiscal year: *Provided*, That beginning in the year 2010
47 and continuing thereafter, the report shall be made to the
48 oversight board created in section eighteen-a, article twenty-two,
49 chapter eight of this code. These reports received by the
50 oversight board shall be provided annually to the State Treasurer
51 by September 1.

52 (2) Before September 1 of each calendar year, the State
53 Treasurer, or the Municipal Pensions Oversight Board, once in
54 operation, shall allocate and authorize for distribution the
55 revenues in the Municipal Pensions and Protection Fund which
56 were collected during the preceding calendar year for the
57 purposes set forth in this section. Before September 1 of each
58 calendar year and after the Municipal Pensions Oversight Board
59 has notified the Treasurer and commissioner pursuant to section
60 eighteen-b, article twenty-two, chapter eight of this code, the

61 Municipal Pensions Oversight Board shall allocate and authorize
62 for distribution the revenues in the Municipal Pensions Security
63 Fund which were collected during the preceding calendar year
64 for the purposes set forth in this section. In any year the actuarial
65 report required by section twenty, article twenty-two, chapter
66 eight of this code indicates no actuarial deficiency in the
67 municipal policemen's or firemen's pension and relief fund, no
68 revenues may be allocated from the Municipal Pensions and
69 Protection Fund or the Municipal Pensions Security Fund to that
70 fund. The revenues from the Municipal Pensions and Protection
71 Fund shall then be allocated to all other pension and relief funds
72 which have an actuarial deficiency.

73 (3) The moneys, and the interest earned thereon, in the
74 Municipal Pensions and Protection Fund allocated to volunteer
75 and part-volunteer fire companies and departments shall be
76 allocated and distributed quarterly to the volunteer fire
77 companies and departments. Before each distribution date, the
78 State Fire Marshal shall report to the State Treasurer the names
79 and addresses of all volunteer and part-volunteer fire companies
80 and departments within the state which meet the eligibility
81 requirements established in section eight-a, article fifteen,
82 chapter eight of this code.

83 (c) (1) Each municipal pension and relief fund shall have
84 allocated and authorized for distribution a pro rata share of the
85 revenues allocated to municipal policemen's and firemen's
86 pension and relief funds based on the corresponding
87 municipality's average monthly number of police officers and
88 firefighters who worked at least one hundred hours per month
89 during the preceding fiscal year. On and after July 1, 1997, from
90 the growth in any moneys collected pursuant to the tax imposed
91 by this section and interest thereon there shall be allocated and
92 authorized for distribution to each municipal pension and relief
93 fund, a pro rata share of the revenues allocated to municipal

94 policemen's and firemen's pension and relief funds based on the
95 corresponding municipality's average number of police officers
96 and firefighters who worked at least one hundred hours per
97 month and average monthly number of retired police officers and
98 firefighters. For the purposes of this subsection, the growth in
99 moneys collected from the tax collected pursuant to this section
100 is determined by subtracting the amount of the tax collected
101 during the fiscal year ending June 30, 1996, from the tax
102 collected during the fiscal year for which the allocation is being
103 made and interest thereon. All moneys received by municipal
104 pension and relief funds under this section may be expended
105 only for those purposes described in sections sixteen through
106 twenty-eight, inclusive, article twenty-two, chapter eight of this
107 code.

108 (2) Each volunteer fire company or department shall receive
109 an equal share of the revenues allocated for volunteer and
110 part-volunteer fire companies and departments.

111 (3) In addition to the share allocated and distributed in
112 accordance with subdivision (1) of this subsection, each
113 municipal fire department composed of full-time paid members
114 and volunteers and part-volunteer fire companies and
115 departments shall receive a share equal to the share distributed
116 to volunteer fire companies under subdivision (2) of this
117 subsection reduced by an amount equal to the share multiplied
118 by the ratio of the number of full-time paid fire department
119 members who are also members of a municipal firemen's
120 pension and relief fund or the Municipal Police Officers and
121 Firefighters Retirement System to the total number of members
122 of the fire department.

123 (d) The allocation and distribution of revenues provided for
124 in this section are subject to the provisions of section twenty,

125 article twenty-two, and sections eight-a and eight-b, article
126 fifteen, chapter eight of this code.

127 (e) Based upon the findings of an audit by the Treasurer, the
128 Legislature hereby finds and declares that during the period of
129 1982 through April 27, 2012 allocations from the Municipal
130 Pensions and Protection Fund were miscalculated and errors
131 were made in amounts transferred, resulting in overpayments
132 and underpayments to the relief and pension funds and to the
133 Teachers Retirement System, and that the relief and pension
134 funds and the Teachers Retirement System were not at fault for
135 any of the overpayments and underpayments. The Legislature
136 hereby further finds and declares that any attempt by the
137 Municipal Pension Oversight Board or other entity to recover
138 any of the overpayments would be unjust and create economic
139 hardship for the entities that received overpayments. No entity,
140 including, without limitation, the Municipal Pension Oversight
141 Board, may seek to recover from a relief or pension fund, the
142 Teachers Retirement System or the state any overpayments
143 received from the Municipal Pensions and Protection Fund and
144 the overpayments are not subject to recovery, offset or litigation.
145 Pursuant to the audit by the Treasurer, the amount of
146 \$3,631,846.55 is determined owed to specific relief and pension
147 funds through the period of April 27, 2012. The Treasurer is
148 hereby authorized to transfer the amount of \$3,631,846.55 from
149 the Unclaimed Property Trust Fund to the Municipal Pensions
150 and Protection Fund, which is hereby reopened for the sole
151 purpose of the transfer and remittances pursuant to this
152 subsection (e), and to use the amount transferred to remit the
153 amounts due to the pension and relief funds. The payment of the
154 \$3,631,846.55 to the pension and relief funds is complete
155 satisfaction of any amounts due, and no entity, including,
156 without limitation, the Municipal Pension Oversight Board and
157 any pension or relief fund, may seek to recover any further
158 amounts.

CHAPTER 36. ESTATES AND PROPERTY.**ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.****§36-8-13. Deposit of funds.**

1 (a) The administrator shall record the name and last known
2 address of each person appearing from the holders reports to be
3 entitled to the property and the name and last known address of
4 each insured person or annuitant and beneficiary and with
5 respect to each policy or annuity listed in the report of an
6 insurance company, its number, the name of the company and
7 the amount due.

8 (b) The Unclaimed Property Fund is continued. The
9 administrator shall deposit all funds received pursuant to this
10 article in the Unclaimed Property Fund, including the proceeds
11 from the sale of abandoned property under section twelve of this
12 article. In addition to paying claims of unclaimed property duly
13 allowed, the administrator may deduct the following expenses
14 from the Unclaimed Property Fund:

15 (1) Expenses of the sale of abandoned property;

16 (2) Expenses incurred in returning the property to owners,
17 including without limitation the costs of mailing and publication
18 to locate owners;

19 (3) Reasonable service charge; and

20 (4) Expenses incurred in examining records of holders of
21 property and in collecting the property from those holders.

22 (c) The Unclaimed Property Trust Fund is continued within
23 the State Treasury. The administrator may invest the Unclaimed
24 Property Trust Fund with the West Virginia Board of Treasury
25 Investments and all earnings shall accrue to the fund and are

26 available for expenditure in accordance with this article. After
27 deducting the expenses specified in subsection (b) of this section
28 and maintaining a sum of money from which to pay claims duly
29 allowed, the administrator shall transfer the remaining moneys
30 in the Unclaimed Property Fund to the Unclaimed Property Trust
31 Fund.

32 (d)(1) On July 1, 2009, the unclaimed property administrator
33 shall transfer the amount of \$8 million from the Unclaimed
34 Property Trust Fund to the Prepaid Tuition Trust Escrow Fund.

35 (2) On or before December 15 of each year, notwithstanding
36 any provision of this code to the contrary, the administrator shall
37 transfer the sum of \$1 million from the Unclaimed Property
38 Trust Fund to the Prepaid Tuition Trust Escrow Fund, until the
39 actuary certifies there are sufficient funds to pay out all
40 contracts.

41 (e) On or before June 1, 2007, the unclaimed property
42 administrator shall transfer the amount of \$2 million from the
43 Unclaimed Property Trust Fund to the Deferred Compensation
44 Matching Fund for operation of the deferred compensation
45 matching program for state employees. On or before June 1,
46 2008, the unclaimed property administrator shall transfer the
47 amount of \$1 million from the Unclaimed Property Trust Fund
48 to the Deferred Compensation Matching Fund for operation of
49 the matching program.

50 (f) On or before June 1, 2013, the unclaimed property
51 administrator shall transfer the amount of \$3,631,846.55 from
52 the Unclaimed Property Trust Fund to the Municipal Pensions
53 and Protection Fund for the purpose of satisfying any amounts
54 due as of April 27, 2012 to policemen's and firemen's pension
55 and relief funds in accordance with section fourteen-d, article
56 three, chapter thirty-three of this Code.

57 (g) After transferring any money required by subsections (d)
58 through (f) of this section, the administrator shall transfer
59 moneys remaining in the Unclaimed Property Trust Fund to the
60 General Revenue Fund.

CHAPTER 203

(Com Sub. for S. B. 426 - By Senator Snyder)

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact §46-4A-108 of the Code of West Virginia, 1931, as amended; to amend and reenact §46-9-510, §46-9-516, §46-9-521 and §46-9-525 of said code; and to amend said code by adding thereto a new section, designated §46-9-516a, all relating to amending the Uniform Commercial Code; clarifying the relationship between article four-a of the West Virginia code and the federal Electronic Fund Transfer Act; resolving conflicts between federal and state law; providing for the effectiveness of filed records; creating additional authority to refuse to accept a record for filing; creating circumstances under which a record filing is false; providing criminal penalties for filing or attempting to file a false record; providing civil penalties for filing or attempting to file a false record; setting forth an administrative procedure initiated by the Secretary of State or a person identified as a debtor on a record; requiring party to an adverse administrative decision by the Secretary of State to file action in Kanawha County Circuit Court if the party wishes to have the Secretary of State's decision reversed; exempting the filing office and its employees from liability; exempting filings by a regulated financial institution or its representatives from certain provisions; clarifying the applicability of provisions to records filed prior to the effective date of this article; increasing fees for filing financing

statements or other records in secured transactions; increasing fees for responding for requests for information related to secured transactions; and requiring that the increase in fees be deposited in the existing Fund for Civil Legal Services for Low Income Persons.

Be it enacted by the Legislature of West Virginia:

That §46-4A-108 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §46-9-510, §46-9-516, §46-9-521 and §46-9-525 of said code, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §46-9-516a, all to read as follows:

ARTICLE 4A. FUNDS TRANSFERS.

§46-4A-108. Relationship to Electronic Fund Transfer Act.

1 (a) Except as provided in subsection (b) of this section, this
2 article does not apply to a funds transfer any part of which is
3 governed by the Electronic Fund Transfer Act of 1978 (Title XX,
4 Public Law 95-630, 92 Stat. 3728, 15 U. S. C. §1693, *et seq.*) as
5 amended from time to time.

6 (b) This article applies to a funds transfer that is a remittance
7 transfer as defined in the Electronic Fund Transfer Act (15 U. S.
8 C. §1693o-1) as amended from time to time, unless the
9 remittance transfer is an electronic fund transfer as defined in the
10 Electronic Fund Transfer Act (15 U. S. C. §1693a) as amended
11 from time to time.

12 (c) In a funds transfer to which this article applies, in the
13 event of an inconsistency between an applicable provision of this
14 article and an applicable provision of the Electronic Fund
15 Transfer Act, the provision of the Electronic Fund Transfer Act
16 governs to the extent of the inconsistency.

**ARTICLE 9. SECURED TRANSACTIONS; SALES OF
ACCOUNTS AND CHATTEL PAPER.****§46-9-510. Effectiveness of filed record.**

1 (a) *Filed record effective if authorized.* — A filed record is
2 effective only to the extent that it was filed by a person that may
3 file it under section 9-509.

4 (b) *Authorization by one secured party of record.* — A
5 record authorized by one secured party of record does not affect
6 the financing statement with respect to another secured party of
7 record.

8 (c) *Continuation statement not timely filed.* — A
9 continuation statement that is not filed within the six-month
10 period prescribed by section 9-515(d) is ineffective.

11 (d) A filed record ceases to be effective if the filing office
12 terminates the record pursuant to section 9-516(a).

§46-9-516. What constitutes filing; effectiveness of filing.

1 (a) *What constitutes filing.* — Except as otherwise provided
2 in subsection (b) of this section, communication of a record to a
3 filing office and tender of the filing fee or acceptance of the
4 record by the filing office constitutes filing.

5 (b) *Refusal to accept record; filing does not occur.* — Filing
6 does not occur with respect to a record that a filing office refuses
7 to accept because:

8 (1) The record is not communicated by a method or medium
9 of communication authorized by the filing office;

10 (2) An amount equal to or greater than the applicable filing
11 fee is not tendered;

12 (3) The filing office is unable to index the record because:

13 (A) In the case of an initial financing statement, the record
14 does not provide a name for the debtor;

15 (B) In the case of an amendment or information statement,
16 the record:

17 (i) Does not identify the initial financing statement as
18 required by 9-512 or 9-518, as applicable;

19 (ii) Identifies an initial financing statement whose
20 effectiveness has lapsed under section 9-515; or

21 (iii) Identifies an initial financing statement which was
22 terminated pursuant to section 9-516(a);

23 (C) In the case of an initial financing statement that provides
24 the name of a debtor identified as an individual or an amendment
25 that provides a name of a debtor identified as an individual
26 which was not previously provided in the financing statement to
27 which the record relates, the record does not identify the debtor's
28 surname;

29 (D) In the case of a record filed or recorded in the filing
30 office described in section 9-501(a)(1), the record does not
31 provide a sufficient description of the real property to which it
32 relates; or

33 (E) In the case of a record submitted to the filing office
34 described in section 9-501(a)(1), the filing office has reason to
35 believe, from information contained in the record or from the
36 person that communicated the record to the office, that:

37 (i) If the record indicates that the debtor is a transmitting
38 utility, the debtor does not meet the definition of a transmitting
39 utility as described in section 9-102(a)(81);

40 (ii) If the record indicates that the transaction relating to the
41 record is a manufactured home transaction, the transaction does
42 not meet the definition of a manufactured home transaction as
43 described in section 9-102(a)(54); or

44 (iii) If the record indicates that the transaction relating to the
45 record is a public finance transaction, the transaction does not

46 meet the definition of a public finance transaction as described
47 in section 9-102(a)(70);

48 (4) In the case of an initial financing statement or an
49 amendment, if the filing office believes in good faith that the
50 record was communicated to the filing office in violation of
51 section 9-516a;

52 (5) In the case of an initial financing statement or an
53 amendment that adds a secured party of record, the record does
54 not provide a name and mailing address for the secured party of
55 record;

56 (6) In the case of an initial financing statement or an
57 amendment that provides a name of a debtor which was not
58 previously provided in the financing statement to which the
59 amendment relates, the record does not:

60 (A) Provide a mailing address for the debtor;

61 (B) Indicate whether the name provided as the name of the
62 debtor is the name of an individual or an organization;

63 (7) In the case of an assignment reflected in an initial
64 financing statement under section 9-514(a) or an amendment
65 filed under section 9-514(b), the record does not provide a name
66 and mailing address for the assignee; or

67 (8) In the case of a continuation statement, the record is not
68 filed within the six-month period prescribed by section 9-515(d).

69 (c) *Rules applicable to subsection (b).* — For purposes of
70 subsection (b):

71 (1) A record does not provide information if the filing office
72 is unable to read or decipher the information; and

73 (2) A record that does not indicate that it is an amendment
74 or identify an initial financing statement to which it relates, as
75 required by section 9-512, 9-514 or 9-518, is an initial financing
76 statement.

77 (d) *Refusal to accept record; record effective as filed record.*
78 — A record that is communicated to the filing office with tender
79 of the filing fee, but which the filing office refuses to accept for
80 a reason other than one set forth in subsection (b) of this section.
81 is effective as a filed record except as against a purchaser of the
82 collateral which gives value in reasonable reliance upon the
83 absence of the record from the files.

**§46-9-516a. Filing fraudulent records; civil and criminal penalties;
administrative proceedings; immunity from
liability.**

1 (a) No person may cause to be communicated to the filing
2 office for filing a false record the person knows or reasonably
3 should know:

4 (1) Is not authorized or permitted under sections 9-509, 9-
5 708 or 9-808; and

6 (2) Is filed with the intent to harass or defraud the person
7 identified as debtor in the record or any other person.

8 (b) Any person who violates subsection (a) of this section
9 shall, for a first offense, be guilty of a misdemeanor and, upon
10 conviction thereof, shall be fined not less than \$100 nor more
11 than \$1000 or, in the discretion of the court, be confined in jail
12 not more than twelve months, or both fined and confined. Any
13 person who violates subsection (a) of this section shall, for a
14 second or subsequent offense, be guilty of a felony and, upon
15 conviction thereof, shall be imprisoned in a state correctional
16 facility not less than one nor more than five years.

17 (c) Any person who violates subsection (a) of this section is
18 liable in a civil action to each injured person for:

19 (1) The greater of the actual damages caused by the violation
20 or up to \$10,000 in lieu of actual damages;

21 (2) Reasonable attorney fees;

22 (3) Court costs and other related expenses of bringing an
23 action including reasonable investigative expenses; and

24 (4) In the discretion of the court, punitive damages in an
25 amount determined by the court or jury.

26 (d) A person identified as a debtor in a filed record the
27 person believes was caused to be communicated to the filing
28 office in violation of subsection (a) of this section may, under
29 penalty of perjury, file with the Secretary of State an affidavit to
30 that effect. The Secretary of State shall adopt and make available
31 a form affidavit for use under this section.

32 (e) Upon receipt of an affidavit filed under this section, or
33 upon administrative action by the Secretary of State, the
34 Secretary of State shall communicate to the secured party of
35 record on the record to which the affidavit or administrative
36 action relates and to the person who communicated the record to
37 the filing office, if different and known to the office, a request
38 for additional documentation supporting the effectiveness of the
39 record. The Secretary of State shall review all such
40 documentation received within thirty days after the first request
41 for additional documentation is sent if the Secretary of State has
42 a reasonable basis for concluding that the record was
43 communicated to the filing office in violation of subsection (a)
44 of this section.

45 The Secretary of State may initiate an administrative action
46 under this subsection with regard to a filed record if the
47 Secretary of State has reason to believe, from information
48 contained in the record or obtained from the person who
49 communicated the record to the filing office, that the record was
50 communicated to the filing office in violation of subsection (a)
51 of this section. The Secretary of State may give heightened
52 scrutiny to a record that indicates the debtor is a transmitting
53 utility or that indicates the transaction to which the record relates

54 is a manufactured home transaction or a public finance
55 transaction.

56 (f) The Secretary of State may not charge a fee to file an
57 affidavit under this section and may not return a fee paid for
58 filing a record terminated under this section.

59 (g) The Secretary of State shall promptly communicate to
60 the secured party of record a notice of the termination of a record
61 under subsection (e) of this section. A secured party of record
62 who believes in good faith that the record was not communicated
63 to the filing office in violation of subsection (a) of this section
64 may file an action to require that the record be reinstated by the
65 filing office. A person who communicated a record to the filing
66 office that the filing office rejected in reliance on section 9-
67 516(b)(4), who believes in good faith that the record was not
68 communicated to the filing office in violation of section 9-
69 516(b)(4), may file an action to require that the record be
70 accepted by the filing office. The jurisdiction for the action is the
71 circuit court of Kanawha County.

72 (h) If the court determines that a record terminated under this
73 section or rejected in reliance on section 9-516(b)(4) should be
74 reinstated or accepted, the court shall provide a copy of an order
75 to that effect to the Secretary of State. On receipt of an order
76 reinstating a terminated record, the Secretary of State shall refile
77 the record along with a notice indicating that the record was
78 refiled pursuant to this section and its initial filing date. On
79 receipt of an order requiring that a rejected record be accepted,
80 the Secretary of State shall promptly file the record along with
81 a notice indicating that the record was filed pursuant to this
82 section and the date on which it was communicated for filing. A
83 rejected record that is filed pursuant to an order of a court shall
84 have the effect described in section 9-516(d) for a record the
85 filing office refuses to accept for a reason other than one set
86 forth in section 9-516(b).

87 (i) A terminated record that is refiled under subsection (h) of
88 this section is effective as a filed record from the initial filing
89 date. If the period of effectiveness of a refiled record would have
90 lapsed during the period of termination, the secured party may
91 file a continuation statement within thirty days after the record
92 is refiled and the continuation statement has the same effect as
93 if it had been filed during the six-month period described in
94 section 9-515(d). A refiled record is considered never to have
95 been ineffective against all persons and for all purposes except
96 that it is not effective as against a purchaser of the collateral that
97 gave value in reasonable reliance on the absence of the record
98 from the files.

99 (j) Neither the filing office nor any of its employees incur
100 liability for the termination or failure to accept a record for filing
101 in the lawful performance of the duties of the office or
102 employee.

103 (k) This section does not apply to a record communicated to
104 the filing office by a regulated financial institution or by a
105 representative of a regulated financial institution, except that the
106 Secretary of State may request from the secured party of record
107 on the record or from the person that communicated the record
108 to the filing office, if different and known to the office,
109 additional documentation supporting that the record was
110 communicated to the filing office by a regulated financial
111 institution or by a representative of a regulated financial
112 institution. For the purposes of this section the term “regulated
113 financial institution” means a financial institution subject to
114 regulatory oversight or examination by a state or federal agency
115 and includes banks, savings banks, savings associations, building
116 and loan associations, credit unions, consumer finance
117 companies, industrial banks, industrial loan companies,
118 investment funds, installment sellers, mortgage servicers, sales
119 finance companies and leasing companies.

120 (l) If a record was communicated to the filing office for
121 filing before the effective date of this section, and its
122 communication would have constituted a violation of subsection
123 (a) of this section if it had occurred on or after the effective date
124 of this section:

125 (i) Subsections (b) and (c) are not applicable; and

126 (ii) The remaining subsections of this section are applicable.

§46-9-521. Written financing statement and amendment thereto.

1 (a) *Initial financing statement.* — A filing office that accepts
2 written records may not refuse to accept a written initial
3 financing statement except for a reason set forth in section
4 9-516(b): *Provided*, That the written record must be on the most
5 recent revision of the appropriate form as approved by the
6 International Association of Commercial Administrators.

7 (b) *Amended financing statement.* — A filing office that
8 accepts written records may not refuse to accept an amended
9 written record except for a reason set forth in section 9-516(b);
10 *Provided*, That the written record must be on the most recent
11 revision of the appropriate form as approved by the International
12 Association of Commercial Administrators.

§46-9-525. Fees.

1 (a) *Initial financing statement or other record: general rule.*
2 — Except as otherwise provided in subsection (e) of this section,
3 the fee for filing and indexing a record under this part, other than
4 an initial financing statement of the kind described in subsection
5 (b) of this section, is the amount specified in subsection (c) of
6 this section, if applicable, plus:

7 (1) \$20 if the record is communicated in writing and
8 consists of one or two pages; and

9 (2) \$20 if the record is communicated in writing and
10 consists of more than two pages; and

11 (3) \$20 if the record is communicated by another medium
12 authorized by filing-office rule.

13 (b) *Initial financing statement: Public-finance and*
14 *manufactured housing transactions.* -- Except as otherwise
15 provided in subsection (e) of this section, the fee for filing and
16 indexing an initial financing statement of the following kind is
17 the amount specified in subsection (c) of this section, if
18 applicable, plus:

19 (1) \$20 if the financing statement indicates that it is filed in
20 connection with a public-finance transaction;

21 (2) \$20 if the financing statement indicates that it is filed in
22 connection with a manufactured-home transaction.

23 (c) *Number of names.* — The number of names required to
24 be indexed does not affect the amount of the fee in subsections
25 (a) and (b) of this section.

26 (d) *Response to information request.* — The fee for
27 responding to a request for information from the filing office,
28 including for issuing a certificate showing whether there is on
29 file any financing statement naming a particular debtor, is:

30 (1) \$10 if the request is communicated in writing;

31 (2) \$10 if the request is communicated by another medium
32 authorized by filing-office rule; and

33 (3) \$1 per page for each active lien.

34 (e) *Record of mortgage.* -- This section does not require a
35 fee with respect to a record of a mortgage which is effective as
36 a financing statement filed as a fixture filing or as a financing
37 statement covering as-extracted collateral or timber to be cut

38 under section 9-502(c). However, the recording and satisfaction
39 fees that otherwise would be applicable to the record of the
40 mortgage apply.

41 (f) *Deposit of funds.* — All fees and moneys collected by the
42 Secretary of State pursuant to the provisions of this article shall
43 be deposited by the Secretary of State as follows: One-half shall
44 be deposited in the special revenue account created by section
45 59-1-59(c)(4)(B), to provide civil legal services for low income
46 persons, one-fourth shall be deposited in the state fund, general
47 revenue, and one-fourth shall be deposited in the service fees and
48 collections account established by section 59-1-2 for the
49 operation of the office of the Secretary of State. Any balance
50 remaining on June 30, 2001, in the existing special revenue
51 account entitled "uniform commercial code" as established by
52 chapter two hundred four, acts of the Legislature, 1989 regular
53 session, shall be transferred to the service fees and collections
54 account established by section 59-1-2 for the operation of the
55 office of the Secretary of State. The Secretary of State shall
56 dedicate sufficient resources from that fund or other funds to
57 provide the services required in this article, unless otherwise
58 provided by appropriation or other action by the Legislature.

CHAPTER 204

(H. B. 2361 - By Delegates Longstreth and Iaquina)

[Passed April 9, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 22, 2013.]

AN ACT to amend and reenact §9A-4-2 of the Code of West Virginia, 1931, as amended, relating to including persons who served honorably in the National Guard and Reserves or who were discharged because of a service connected disability in the

definition of "eligible veteran" for certain state training and employment preference benefits.

Be it enacted by the Legislature of West Virginia:

That §9A-4-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. VETERANS EMPLOYMENT TRAINING PRIORITY.

§9A-4-2. Definitions.

1 (a) "Eligible veteran" means a person who:

2 (1) Served on active duty and was discharged or released
3 from active duty with an honorable discharge or because of a
4 service connected disability;

5 (2) As a member of a reserve component under an order to
6 active duty, served on active duty during a period of war or in a
7 campaign or expedition for which a campaign badge or ribbon
8 is authorized and was discharged or released from duty with an
9 honorable discharge; or

10 (3) Served as a member of a National Guard or Reserve
11 component and completed his or her military obligation and
12 received an honorable discharge from the National Guard or
13 Reserve component or was discharged from the National Guard
14 or Reserve component because of a service connected disability.

15 (b) "Priority of service" means the right to priority in any
16 employment or training program offered citizens of West
17 Virginia which is funded, in whole or in part, through federal or
18 state moneys.

19 (c) "Reserve component" means any branch of the military,
20 including any military defense forces.

21 (d) "Training program" means a program that provides
22 training leading to qualification for employment, or improved
23 skills, or both, funded, in whole or in part, through the workforce
24 investment act or another federal or state act administered
25 through the state and having as its primary purpose workforce
26 development.

27 (e) "Training provider" means any private or public entity
28 which has been certified by competent authority to provide
29 training funded by federal or state funds appropriated in the
30 budget under the jobs training partnership act or another federal
31 or state act having as its primary purpose workforce
32 development.

CHAPTER 205

**(Com. Sub. for H. B. 2579 - By Delegates R. Phillips,
Stowers, Eldridge, Tomblin, White, Marcum, Caputo,
Boggs, Craig, Sumner and J. Nelson)**

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §22-11-6 of the Code of West Virginia, 1931, as amended, relating to protecting state waters; providing legislative findings; acknowledging the scientific uncertainty regarding the applicability of the current selenium standard in this state; directing the secretary to develop an implementation plan within certain time period for selenium discharges in certain situations; requiring certain minimum requirements in implementation plan; requiring secretary to promulgate legislative rule within certain time period which establishes a state-specific selenium standard; requiring secretary to submit state-specific

selenium standard to EPA administrator; and directing secretary to consult with and solicit research and data from certain groups in developing selenium standard.

Be it enacted by the Legislature of West Virginia:

That §22-11-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-6. Requirement to comply with standards of water quality and effluent limitations.

1 All persons affected by rules establishing water quality
2 standards and effluent limitations shall promptly comply
3 therewith: *Provided, That:*

4 (1) Where necessary and proper, the secretary may specify
5 a reasonable time for persons not complying with such standards
6 and limitations to comply therewith, and upon the expiration of
7 any such period of time, the secretary shall revoke or modify any
8 permit previously issued which authorized the discharge of
9 treated or untreated sewage, industrial wastes or other wastes
10 into the waters of this state which result in reduction of the
11 quality of such waters below the standards and limitations
12 established therefor by rules of the board or secretary;

13 (2) Notwithstanding any rule or permit condition to the
14 contrary, and except for any standard imposed under section 307
15 of the federal Water Pollution Control Act for a toxic pollutant
16 injurious to human health, compliance with a permit issued
17 pursuant to this article shall be deemed compliance for purposes
18 of both this article and sections 301, 302, 306, 307 and 403 of
19 the federal Water Pollution Control Act. Nothing in this section,
20 however, prevents the secretary from modifying, reissuing or
21 revoking a permit during its term. The provisions of this section

22 addressing compliance with a permit are intended to apply to all
23 existing and future discharges and permits without the need for
24 permit modifications. However, should any such modification be
25 necessary under the terms of this article, then the secretary shall
26 immediately commence the process to effect such modifications;
27 and

28 (3) The Legislature finds that there are concerns within West
29 Virginia regarding the applicability of the research underlying
30 the federal selenium criteria to a state such as West Virginia
31 which has high precipitation rates and free-flowing streams and
32 that the alleged environmental impacts that were documented in
33 applicable federal research have not been observed in West
34 Virginia and, further, that considerable research is required to
35 determine if selenium is having an impact on West Virginia
36 streams, to validate or determine the proper testing methods for
37 selenium and to better understand the chemical reactions related
38 to selenium mobilization in water.

39 (4) The Legislature finds that EPA has been contemplating
40 a revision to the federally recommended criteria for several years
41 but has yet to issue a revised standard.

42 (5) Because of the uncertainty regarding the applicability of
43 the current selenium standard, the secretary is hereby directed to
44 develop within six months of the effective date of this
45 subdivision an implementation plan for the current selenium
46 standard that will include, at minimum, the following:

47 (A) Implementing the criteria as a threshold standard;

48 (B) A monitoring plan that will include chemical speciation
49 of any selenium discharge;

50 (C) A fish population survey and monitoring plan that will
51 be implemented at a representative location to assess any

52 possible impacts from selenium discharges if the threshold
53 criteria are exceeded; and

54 (D) The results of the monitoring will be reported to the
55 department for use in the development of state-specific selenium
56 criteria.

57 (6) Within twenty-four months of the effective date of this
58 subdivision, the secretary shall propose rules for legislative
59 approval in accordance with the provisions of article three,
60 chapter twenty-nine of this code which establish a state-specific
61 selenium standard that protects aquatic life. Concurrent with
62 proposing a legislative rule, the secretary shall also submit the
63 proposed standard and supporting documentation to the
64 Administrator of the Environmental Protection Agency. The
65 secretary shall also consult with and consider research and data
66 from the West Virginia Water Research Institute at West
67 Virginia University, the regulated community, and other
68 appropriate groups in developing the state-specific selenium
69 standard.

CHAPTER 206

(S. B. 596 - By Senators Kessler, (Mr. President) and M. Hall)
[By Request of the Executive]

[Passed April 13, 2013; in effect from passage.]
[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact §31-15A-17b of the Code of West Virginia, 1931, as amended, relating to requiring the West Virginia Infrastructure and Jobs Development Council to direct the Water Development Authority to make grants to certain eligible certified

Chesapeake Bay and Greenbrier River watershed compliance projects.

Be it enacted by the Legislature of West Virginia:

That §31-15A-17b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND
JOBS DEVELOPMENT COUNCIL.**

**§31-15A-17b. Infrastructure lottery revenue bonds for watershed
compliance projects.**

1 (a) (1) The Chesapeake Bay has been identified as an
2 impaired water body due to excessive nutrients entering the bay
3 from various sources in six states, including wastewater facilities
4 in West Virginia. To restore the Chesapeake Bay, the states have
5 agreed to reduce their respective nutrient contributions to the
6 Chesapeake Bay.

7 (2) The Greenbrier River Watershed in southeastern West
8 Virginia which encompasses approximately 1,646 square miles,
9 the majority of which lies within Pocahontas, Greenbrier,
10 Monroe and Summers counties, has been identified as an
11 impaired water body due to excessive levels of fecal coliform
12 and phosphorus entering the watershed from various sources,
13 including wastewater facilities in West Virginia. To restore the
14 Greenbrier River Watershed, the state agrees to reduce the fecal
15 coliform and phosphorus contributions to the Greenbrier River
16 Watershed.

17 (b) Notwithstanding any other provision of this code to the
18 contrary, the Water Development Authority may issue, in
19 accordance with the provisions of section seventeen of this
20 article, infrastructure lottery revenue bonds payable from the
21 West Virginia Infrastructure Lottery Revenue Debt Service Fund
22 created by section nine of this article and such other sources as
23 may be legally pledged for such purposes other than the West

24 Virginia Infrastructure Revenue Debt Service Fund created by
25 section seventeen of this article.

26 (c) The council shall direct the Water Development
27 Authority to issue bonds in one or more series when it has
28 approved Chesapeake Bay watershed compliance projects and
29 Greenbrier River watershed compliance projects with an
30 authorized permitted flow of four hundred thousand gallons per
31 day or more. The proceeds of the bonds shall be used solely to
32 pay costs of issuance, fund a debt service reserve account,
33 capitalize interest, pay for security instruments necessary to
34 market the bonds and to make grants to governmental
35 instrumentalities of the state for the construction of approved
36 Chesapeake Bay watershed compliance projects and Greenbrier
37 River watershed compliance projects. To the extent funds are
38 available in the West Virginia Infrastructure Lottery Revenue
39 Debt Service Fund that are not needed for debt service, the
40 council may direct the Water Development Authority to make
41 grants to project sponsors for the design or construction of
42 approved Chesapeake Bay watershed compliance projects and
43 Greenbrier River watershed compliance projects: *Provided*, That
44 the council shall direct the Water Development Authority to
45 provide from moneys in the Lottery Revenue Debt Service Fund
46 not needed to pay debt service in fiscal year 2013 a grant of \$6
47 million to a Chesapeake Bay watershed compliance project
48 which opened bids on December 28, 2011, and further provided
49 that such Chesapeake Bay watershed compliance project shall
50 receive no further grant funding under this section after receipt
51 of the \$6 million grant.

52 (d) No later than June 30, 2012, each publicly owned facility
53 with an authorized permitted flow of four hundred thousand
54 gallons per day or more that is subject to meeting Chesapeake
55 Bay compliance standards or Greenbrier River watershed
56 compliance standards shall submit to the council a ten-year
57 projected capital funding plan for Chesapeake Bay watershed
58 compliance projects or Greenbrier River watershed compliance

59 projects, as the case may be, including a general project
60 description, cost estimate and estimated or actual project start
61 date and project completion date, if any. The council shall timely
62 review the submitted capital funding plans and forward approved
63 plans to the Water Development Authority for further processing
64 and implementation pursuant to this article. If the council finds
65 a plan to be incomplete, inadequate or otherwise problematic, it
66 shall return the plan to the applicant with comment on the plan
67 shortcomings. The applicant may then resubmit to council an
68 amended capital funding plan for further consideration pursuant
69 to the terms of this subsection.

70 (e) Upon approval, each proposed Chesapeake Bay
71 watershed compliance project or Greenbrier River watershed
72 compliance project, or portion of a larger project, which portion
73 is dedicated to compliance with nutrient standards, or fecal
74 coliform and phosphorus standards, established for the
75 protection and restoration of the Chesapeake Bay or the
76 Greenbrier River watershed, as the case may be, shall be eligible
77 for grant funding by funds generated by the infrastructure lottery
78 revenue bonds described in subsection (b) of this section. At the
79 request of the applicant, the remaining percentage of project
80 funding not otherwise funded by grant under the provisions of
81 this article may be reviewed as a standard project funding
82 application.

83 (f) No later than December 1, 2012, the Water Development
84 Authority shall report to the Joint Committee on Government
85 and Finance the total cost of Chesapeake Bay watershed
86 compliance projects and the Greenbrier River watershed
87 compliance projects and the proposed grant awards for each
88 eligible project. From the proceeds of bonds issued under
89 subsection (b) of this section, the council shall direct the Water
90 Development Authority to make grants to eligible projects ready
91 to proceed to construction and those grant awards shall be pro
92 rated to an equal percentage of total eligible costs among all
93 applicants for each eligible project as certified by the Water

94 Development Authority in its report to the Joint Committee on
95 Government and Finance dated November 28, 2012: *Provided,*
96 That the final project, and its financing, is consistent with the
97 scope of the eligible project included in the council's approval
98 on December 5, 2012.

99 (g) Eligible projects that have obtained project financing
100 prior to December 31, 2012, may apply to the council for
101 funding under the provisions of this section. These applications
102 shall be processed and considered as all other eligible projects,
103 and a grant funding awarded shall, to the extent allowed by law,
104 be dedicated to prepay all or a portion of debt previously
105 incurred by governmental instrumentalities of the state for
106 required Chesapeake Bay nutrient removal projects or
107 Greenbrier River watershed fecal coliform and phosphorus
108 removal projects, subject to the bond covenants and contractual
109 obligations of the borrowing governmental entity. However, any
110 private portion of funding provided by agreement between a
111 political subdivision and one or more private entities, either by
112 direct capital investment or debt service obligation, shall not be
113 eligible for grant funding under the provisions of this article.

CHAPTER 207

**(S. B. 470 - By Senators Miller, Williams, Stollings,
Kessler, Mr. President and Beach)**

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating generally to permitting wineries and farm wineries to sell samples and wine at licensed fairs or festivals on Sunday mornings; and limiting samples to three ounces.

Be it enacted by the Legislature of West Virginia:

That §60-8-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. SALE OF WINES.

§60-8-3. Licenses; fees; general restrictions.

1 (a) No person may engage in business in the capacity of a
2 winery, farm winery, supplier, distributor, retailer, private wine
3 bed and breakfast, private wine restaurant, private wine spa or
4 wine specialty shop without first obtaining a license from the
5 commissioner, nor shall a person continue to engage in any
6 activity after his or her license has expired, been suspended or
7 revoked. No person may be licensed simultaneously as a
8 distributor and a retailer. No person, except for a winery or farm
9 winery, may be licensed simultaneously as a supplier and a
10 retailer. No person may be licensed simultaneously as a supplier
11 and a private wine bed and breakfast, private wine restaurant or
12 a private wine spa. No person may be licensed simultaneously as
13 a distributor and a private wine bed and breakfast, a private wine
14 restaurant or a private wine spa. No person may be licensed
15 simultaneously as a retailer and a private wine bed and breakfast,
16 a private wine restaurant or a private wine spa.

17 (b) The commissioner shall collect an annual fee for licenses
18 issued under this article, as follows:

19 (1) One hundred fifty dollars per year for a supplier's
20 license;

21 (2) Twenty-five hundred dollars per year for a distributor's
22 license and each separate warehouse or other facility from which
23 a distributor sells, transfers or delivers wine shall be separately
24 licensed and there shall be collected with respect to each location
25 the annual license fee of \$2,500 as herein provided;

26 (3) One hundred fifty dollars per year for a retailer's license;

27 (4) Two hundred fifty dollars per year for a wine specialty
28 shop license, in addition to any other licensing fees paid by a
29 winery or retailer holding a license, except for the amount of the
30 license fee and the restriction to sales of winery or farm winery
31 wines, a winery or farm winery acting as a wine specialty shop
32 retailer is subject to all other provisions of this article which are
33 applicable to a wine specialty shop retailer as defined in section
34 two of this article;

35 (5) One hundred fifty dollars per year for a wine tasting
36 license;

37 (6) One hundred fifty dollars per year for a private wine bed
38 and breakfast license, and each separate bed and breakfast from
39 which a licensee sells wine shall be separately licensed and there
40 shall be collected with respect to each location the annual license
41 fee of \$150 as herein provided;

42 (7) Two hundred fifty dollars per year for a private wine
43 restaurant license, and each separate restaurant from which a
44 licensee sells wine shall be separately licensed and there shall be
45 collected with respect to each location the annual license fee of
46 \$250 as herein provided;

47 (8) One hundred fifty dollars per year for a private wine spa
48 license and each separate private wine spa from which a licensee
49 sells wine shall be separately licensed and there shall be
50 collected with respect to each location the annual license fee of
51 \$150 as herein provided;

52 (9) One hundred fifty dollars per year for a wine sampling
53 license issued for a wine specialty shop under subsection (n) of
54 this section;

55 (10) No fee shall be charged for a special one-day license
56 under subsection (p) of this section or for a heritage fair and
57 festival license under subsection (q) of this section; and

58 (11) One hundred fifty dollars per year for a direct shipper's
59 license for a licensee who sells and ships only wine and \$250 per
60 for a direct shipper's license who ships and sells wine,
61 nonfortified dessert wine, port, sherry or Madeira wines.

62 (12) Three hundred dollars per year for a multicapacity
63 winery or farm winery license which shall enable the holder to
64 operate as a retailer, wine specialty shop, supplier and direct
65 shipper without obtaining an individual license for each capacity.

66 (c) The license period shall begin on July 1 of each year and
67 end on June 30 of the following year and if granted for a less
68 period, the same shall be computed semiannually in proportion
69 to the remainder of the fiscal year.

70 (d) No retailer may be licensed as a private club as provided
71 by article seven of this chapter, except as provided by subsection
72 (k) of this section.

73 (e) No retailer may be licensed as a Class A retail dealer in
74 nonintoxicating beer as provided by article sixteen, chapter
75 eleven of this code: *Provided, That a delicatessen, a caterer or*
76 *party supply store which is a grocery store as defined in section*
77 *two of this article and which is licensed as a Class A retail dealer*
78 *in nonintoxicating beer may be a retailer under this article:*
79 *Provided, however, That any delicatessen, caterer or party*
80 *supply store licensed in both capacities must maintain average*
81 *monthly sales exclusive of sales of wine and nonintoxicating*
82 *beer which exceed the average monthly sales of nonintoxicating*
83 *beer.*

84 (f) A wine specialty shop under this article may also hold a
85 wine tasting license authorizing the retailer to serve
86 complimentary samples of wine in moderate quantities for
87 tasting. Such wine specialty shop shall organize a wine taster's
88 club, which has at least fifty duly elected or approved

89 dues-paying members in good standing. Such club shall meet on
90 the wine specialty shop's premises not more than one time per
91 week and shall either meet at a time when the premises are
92 closed to the general public, or shall meet in a separate
93 segregated facility on the premises to which the general public
94 is not admitted. Attendance at tastings shall be limited to duly
95 elected or approved dues-paying members and their guests.

96 (g) A retailer who has more than one place of retail business
97 shall obtain a license for each separate retail establishment. A
98 retailer's license may be issued only to the proprietor or owner
99 of a bona fide grocery store or wine specialty shop.

100 (h) The commissioner may issue a special license for the
101 retail sale of wine at any festival or fair which is endorsed or
102 sponsored by the governing body of a municipality or a county
103 commission. Such special license shall be issued for a term of no
104 longer than ten consecutive days and the fee therefor shall be
105 \$250 regardless of the term of the license unless the applicant is
106 the manufacturer of said wine on a winery or a farm winery as
107 defined in section five-a, article one of this chapter, in which
108 event the fee shall be \$50 if the event is held on the premises of
109 the winery or farm winery. The application for the license shall
110 contain information as the commissioner may reasonably require
111 and shall be submitted to the commissioner at least thirty days
112 prior to the first day when wine is to be sold at the festival or
113 fair. A winery or a farm winery licensed under this subsection
114 may exhibit, conduct tastings or sell samples, not to exceed a
115 reasonable serving of three ounces, and may sell wine samples
116 for consumption on the premises during the operation of a
117 festival or fair: *Provided*, That for licensed wineries or farm
118 wineries at a licensed festival or fair the tastings, samples and
119 off-premises sales shall occur under the hours of operation as
120 required in this article, except that on Sunday tastings, samples
121 and off-premises sales are unlawful between the hours of 2:00 a.

122 m. and 10:00 a. m. A special license issued other than to a
123 winery or a farm winery may be issued to a “wine club” as
124 defined herein below. The festival or fair committee or the
125 governing body shall designate a person to organize a club under
126 a name which includes the name of the festival or fair and the
127 words “wine club”. The license shall be issued in the name of the
128 wine club. A licensee may not commence the sale of wine as
129 provided in this subsection until the wine club has at least fifty
130 dues-paying members who have been enrolled and to whom
131 membership cards have been issued. Thereafter, new members
132 may be enrolled and issued membership cards at any time during
133 the period for which the license is issued. A wine club licensed
134 under the provisions of this subsection may sell wine only to its
135 members, and in portions not to exceed eight ounces per serving.
136 The sales shall take place on premises or in an area cordoned or
137 segregated so as to be closed to the general public, and the
138 general public shall not be admitted to the premises or area. A
139 wine club licensee under the provisions of this subsection shall
140 be authorized to serve complimentary samples of wine in
141 moderate quantities for tasting.

142 A license issued under the provisions of this subsection and
143 the licensee holding the license shall be subject to all other
144 provisions of this article and the rules and orders of the
145 commissioner relating to the special license: *Provided*. That the
146 commissioner may by rule, regulation or order provide for
147 certain waivers or exceptions with respect to the provisions,
148 rules, regulations or orders as the circumstances of each festival
149 or fair may require, including, without limitation, the right to
150 revoke or suspend any license issued pursuant to this section
151 prior to any notice or hearing notwithstanding the provisions of
152 section twenty-seven and twenty-eight of this article: *Provided*,
153 *however*, That under no circumstances shall the provisions of
154 subsection (c) or (d), section twenty of this article be waived nor
155 shall any exception be granted with respect thereto.

156 A license issued under the provisions of this subsection and
157 the licensee holding the license is not subject to the provisions
158 of subsection (g) of this section.

159 (i) (A) The commissioner may issue a special license for the
160 retail sale of wine in a professional baseball stadium. A license
161 to sell wine granted pursuant to this subsection entitles the
162 licensee to sell and serve wine, for consumption in a professional
163 baseball stadium. For the purpose of this subsection,
164 "professional baseball stadium" means a facility constructed
165 primarily for the use of a major or minor league baseball
166 franchisee affiliated with the National Association of
167 Professional Baseball Leagues, Inc., or its successor, and used as
168 a major or minor league baseball park. Any special license
169 issued pursuant to this subsection shall be for a term beginning
170 on the date of issuance and ending on the next following June
171 30, and its fee is \$250 regardless of the length of the term of the
172 license. The application for the special license shall contain
173 information as the commissioner may reasonably require and
174 must be submitted to the commissioner at least thirty days prior
175 to the first day when wine is to be sold at the professional
176 baseball stadium. The special license may be issued in the name
177 of the baseball franchisee or the name of the primary food and
178 beverage vendor under contract with the baseball franchisee.
179 These sales must take place within the confines of the
180 professional baseball stadium, provided that the exterior of the
181 area where wine sales may occur are surrounded by a fence or
182 other barrier prohibiting entry except upon the franchisee's
183 express permission, and under the conditions and restrictions
184 established by the franchisee, so that the wine sales area is
185 closed to free and unrestricted entry by the general public.

186 (B) A license issued under this subsection and the licensee
187 holding the license is subject to all other provisions of this article
188 and the rules and orders of the commissioner relating to the
189 special license: *Provided*, That the commissioner may by rule or

190 order grant certain waivers or exceptions to those rules or orders
191 as the circumstances of each professional baseball stadium may
192 require, including, without limitation, the right to revoke or
193 suspend any license issued pursuant to this section prior to any
194 notice or hearing notwithstanding sections twenty-seven and
195 twenty-eight of this article: *Provided, however,* That under no
196 circumstances may subsection (c) or (d), section twenty of this
197 article be waived nor shall any exception be granted concerning
198 those subsections.

199 (C) The commissioner has the authority to propose rules for
200 legislative approval in accordance with article three, chapter
201 twenty-nine-a of this code to implement this subsection.

202 (j) A license to sell wine granted to a private wine bed and
203 breakfast, private wine restaurant, private wine spa or a private
204 club under the provisions of this article entitles the operator to
205 sell and serve wine, for consumption on the premises of the
206 licensee, when the sale accompanies the serving of food or a
207 meal to its members and their guests in accordance with the
208 provisions of this article: *Provided,* That a licensed private wine
209 bed and breakfast, private wine restaurant, private wine spa or a
210 private club may permit a person over twenty-one years of age
211 to purchase wine, consume wine and recork or reseal, using a
212 tamper resistant cork or seal, up to two separate bottles of
213 unconsumed wine in conjunction with serving of food or a meal
214 to its members and their guests in accordance with the provisions
215 of this article and in accordance with regulations promulgated by
216 the commissioner for the purpose of consumption of said wine
217 off premises: *Provided, however,* That for this article, food or a
218 meal provided by the private licensee means that the total food
219 purchase, excluding beverage purchases, taxes, gratuity or other
220 fees is at least \$15: *Provided further,* That a licensed private
221 wine restaurant or a private club may offer for sale for
222 consumption off the premises, sealed bottles of wine to its
223 customers provided that no more than one bottle is sold per each

224 person over twenty-one years of age, as verified by the private
225 wine restaurant or private club, for consumption off the
226 premises. Such licensees are authorized to keep and maintain on
227 their premises a supply of wine in quantities as may be
228 appropriate for the conduct of operations thereof. Any sale of
229 wine so made shall be subject to all restrictions set forth in
230 section twenty of this article. A private wine restaurant may also
231 be licensed as a Class A retail dealer in nonintoxicating beer as
232 provided by article sixteen, chapter eleven of this code.

233 (k) With respect to subsections (h), (i), (j), (o) and (p) of this
234 section, the commissioner shall promulgate legislative rules in
235 accordance with the provisions of chapter twenty-nine-a of this
236 code with regard to the form of the applications, the suitability
237 of both the applicant and location of the licensed premises and
238 other legislative rules deemed necessary to carry the provisions
239 of the subsections into effect.

240 (l) The commissioner shall promulgate legislative rules in
241 accordance with the provisions of chapter twenty-nine-a of this
242 code to allow restaurants to serve wine with meals, and to sell
243 wine by the bottle for off-premises consumption as provided in
244 subsection (j) of this section. Each restaurant so licensed shall be
245 charged an additional \$100 per year fee.

246 (m) The commissioner shall establish guidelines to permit
247 wines to be sold in all stores licensed for retail sales.

248 (n) Wineries and farm wineries may advertise off premises
249 as provided in section seven, article twenty-two, chapter
250 seventeen of this code.

251 (o) A wine specialty shop under this article may also hold a
252 wine sampling license authorizing the wine specialty shop to
253 conduct special wine sampling events at a licensed wine
254 specialty shop location during regular hours of business. The

255 wine specialty shop may serve up to three complimentary
256 samples of wine, consisting of no more than one ounce each, to
257 any one consumer in one day. Persons serving the
258 complimentary samples must be twenty-one years of age and an
259 authorized representative of the licensed wine specialty shop,
260 winery, farm winery or a representative of a distributor or
261 registered supplier. Distributor and supplier representatives
262 attending wine sampling events must be registered with the
263 commissioner. No licensee, employee or representative may
264 furnish, give or serve complimentary samples of wine to any
265 person less than twenty-one years of age or to a person who is
266 physically incapacitated due to the consumption of alcoholic
267 liquor or the use of drugs. The wine specialty shop shall notify
268 and secure permission from the commissioner for all wine
269 sampling events one month prior to the event. Wine sampling
270 events may not exceed six hours per calendar day. Licensees
271 must purchase all wines used during these events from a licensed
272 farm winery or a licensed distributor.

273 (p) The commissioner may issue special one-day licenses to
274 duly organized, nonprofit corporations and associations allowing
275 the sale and serving of wine when raising money for athletic,
276 charitable, educational or religious purposes. The license
277 application shall contain information as the commissioner may
278 reasonably require and shall be submitted to the commissioner
279 at least thirty days prior to the event. Wines used during these
280 events may be donated by or purchased from a licensed retailer,
281 a distributor or a farm winery. Under no circumstances may the
282 provision of subsection (c), section twenty of this article be
283 waived nor may any exception be granted with respect thereto.

284 (q) The commissioner may issue special licenses to heritage
285 fairs and festivals allowing the sale, serving and sampling of
286 wine from a licensed farm winery. The license application shall
287 contain information required by the commissioner and shall be
288 submitted to the commissioner at least thirty days prior to the

289 event. Wines used during these events may be donated by or
290 purchased from a licensed farm winery. Under no circumstances
291 may the provision of subsection (c), section twenty of this article
292 be waived nor may any exception be granted with respect
293 thereto. The commissioner shall propose rules for legislative
294 approval in accordance with article three, chapter twenty-nine-a
295 of this code to implement the provisions of this subsection.

CHAPTER 208

(Com. Sub. for H. B. 2046 - By Delegates Perry and P. Smith)

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-3-10, relating to requiring wireless telecommunications carriers to provide location information to law-enforcement agencies in emergencies; permitting wireless communications carriers to establish protocols for disclosure of location information in an emergency; limiting liability of wireless communications carriers when acting in good faith; requiring wireless telecommunications carriers and resellers to provide emergency contact information; requiring the West Virginia State Police to maintain emergency contact database; and granting rule-making authority.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-3-10, to read as follows:

ARTICLE 3. COMMUNICATION SYSTEMS FOR POLICE PURPOSES.**§15-3-10. Disclosure of location information; emergency situations.**

1 (a) Upon request of a law-enforcement agency, a wireless
2 telecommunications carrier or internet account provider shall
3 provide location information concerning the telecommunications
4 device of the user to the requesting law-enforcement agency in
5 order to respond to a call for emergency services or in an
6 emergency situation that involves the risk of death or serious
7 physical harm.

8 (b) Notwithstanding any other provision of law to the
9 contrary, nothing in this section prohibits a wireless
10 telecommunications carrier or internet account provider from
11 establishing protocols to respond to a law enforcement agency
12 request for location information in an emergency situation or a
13 call for emergency services.

14 (c) No cause of action shall lie in any court against any
15 wireless telecommunications carrier or internet account provider,
16 its officers, employees, agents or other specified persons for
17 providing location information while acting in good faith and in
18 accordance with the provisions of this section.

19 (d) (1) All wireless telecommunications carriers or internet
20 account providers registered to do business in the State of West
21 Virginia or submitting to the jurisdiction thereof and all resellers
22 of wireless telecommunications services shall submit their
23 emergency contact information to the West Virginia State Police
24 in order to facilitate requests from a law-enforcement agency for
25 location information in accordance with this section. This
26 contact information must be submitted annually by June 15th or
27 immediately upon any change in contact information.

28 (2) The State Police shall maintain a database containing
29 emergency contact information for all wireless
30 telecommunications carriers or internet account providers

31 registered to do business in the State of West Virginia and shall
32 make the information immediately available upon request to all
33 public safety answer points in the state.

34 (e) The Superintendent of the West Virginia State Police
35 shall prescribe and promulgate reasonable rules to fulfill the
36 requirements of this section no later than July 1, 2014.

37 (f) This section shall be known and may be cited as the
38 "Kelsey Smith Act".

CHAPTER 209

(Com. Sub. for H. B. 3069 - By Delegates Miley, Manchin, Hunt,
Poore, Sponaugle, Skinner, Ellem and Lane)

[Passed April 13, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 1, 2013.]

AN ACT to amend and reenact §23-5-16 of the Code of West Virginia, 1931, as amended, relating to providing that attorney fees may be awarded for successful recovery of denied medical benefits in certain workers' compensation cases; and providing fee limits.

Be it enacted by the Legislature of West Virginia:

That §23-5-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. REVIEW.

§23-5-16. Fees of attorney for claimant; unlawful charging or receiving of attorney fees.

1 (a) An attorney's fee in excess of twenty percent of any
2 award granted may not be charged or received by an attorney for

3 a claimant or dependent. In no case may the fee received by the
4 attorney of the claimant or dependent be in excess of twenty
5 percent of the benefits to be paid during a period of two hundred
6 eight weeks. The interest on disability or dependent benefits as
7 provided in this chapter may not be considered as part of the
8 award in determining the attorney's fee. However, any contract
9 entered into in excess of twenty percent of the benefits to be paid
10 during a period of two hundred eight weeks, as herein provided,
11 is unlawful and unenforceable as contrary to the public policy of
12 this state and any fee charged or received by an attorney in
13 violation thereof is an unlawful practice and renders the attorney
14 subject to disciplinary action.

15 (b) On a final settlement an attorney may charge a fee not to
16 exceed twenty percent of the total value of the medical and
17 indemnity benefits: *Provided*, That this attorney's fee, when
18 combined with any fees previously charged or received by the
19 attorney for permanent partial disability or permanent total
20 disability benefits may not exceed twenty percent of an award of
21 benefits to be paid during a period of two hundred eight weeks.

22 (c) Except attorney's fees and costs recoverable pursuant to
23 subsection (c), section twenty-one, article two-c of this chapter,
24 an attorney's fee for successful recovery of denied medical
25 benefits may be charged or received by an attorney, and paid by
26 the private carrier or self-insured employer, for a claimant or
27 dependent under this section. In no event may attorney's fees
28 and costs be awarded pursuant to both this section and
29 subsection (c), section twenty-one, article two-c of this chapter.

30 (1) If a claimant successfully prevails in a proceeding
31 relating to a denial of medical benefits brought before the
32 commission, successor to the commission, other private carrier
33 or self-insured employer, whichever is applicable, as a result of
34 utilization review, arbitration, mediation or other proceedings,

35 or a combination thereof, relating to denial of medical benefits
36 before the Office of Judges, Board of Review or court, there
37 shall additionally be charged against the private carriers or
38 self-insured employers, whichever is applicable, the reasonable
39 costs and reasonable hourly attorney fees of the claimant.
40 Following the successful resolution of the denial in favor of the
41 claimant, a fee petition shall be submitted by the claimant's
42 attorney to the Insurance Commissioner or his or her successors,
43 arbitrators, mediator, the Office of Judges, the Board of Review,
44 or court, whichever enters a final decision on the issue. An
45 attorney representing a claimant must submit a claim for
46 attorney fees and costs within thirty days following a decision in
47 which the claimant prevails and the order becomes final.

48 (2) The Insurance Commissioner or his or her successors,
49 arbitrators, mediator, the Office of Judges, the Board of Review,
50 or court shall enter an order within thirty days awarding
51 reasonable attorney fees not to exceed \$125 per hour and
52 reasonable costs of the claimant to be paid by the private carriers
53 or self-insured employers, whichever is applicable, which shall
54 be paid as directed. In no event may an award of the claimant's
55 attorney's fees under this subsection exceed \$500 per litigated
56 medical issue, not to exceed \$2,500 in a claim.

57 (3) In determining the reasonableness of the attorney fees to
58 be awarded, the Insurance Commission, arbitrator, mediator,
59 Office of Judges, Board of Review, or court shall consider the
60 experience of the attorney, the complexity of the issue, the hours
61 expended, and the contingent nature of the fee.

CHAPTER 210

(S. B. 658 - By Senators Stollings and Plymale)

[Passed April 11, 2013; in effect from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to extend the time for the city council of the city of Madison, Boone County, to meet as a levying body for the purpose of presenting to the voters of the city an election to supplement current funds for the city police department, the city street department, recreation and for general government and for the purpose of paying all costs incurred in the laying of this additional levy from between March 7 and March 28 and the third Tuesday in April until May 31, 2013.

Be it enacted by the Legislature of West Virginia:

THE CITY COUNCIL OF THE CITY OF MADISON MEETING AS A LEVYING BODY EXTENDED.

§1. Extending time for the city council for the city of Madison to meet as a levying body for an election to supplement current funds for the city police department, the city street department, recreation and for general government and for the purpose of paying all costs incurred in the laying of the additional levy.

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the Code of West Virginia, 1931, as amended, the city
3 council of the city of Madison, Boone County, is authorized to
4 extend the time for its meeting as a levying body, setting the levy
5 rate and certifying its actions to the State Auditor and the State
6 Tax Commissioner from between March 7 and March 28 and the

7 third Tuesday in April until May 31, 2013, for the purpose of
8 submitting to the voters of the city of Madison the question of
9 supplementing current funds for the city police department, the
10 city street department, recreation and for general government
11 and for the purpose of paying all costs incurred in the laying of
12 this additional levy.

CHAPTER 211

(S. B. 571 - By Senators D. Hall and Green)

[Passed April 5, 2013; in effect from passage.]

[Approved by the Governor on April 17, 2013.]

AN ACT to extend the time for the city council of the city of Oceana, Wyoming County, to meet as a levying body for the purpose of presenting to the voters of the city an election to supplement current funds for the city park and pool operation and for the purpose of paying all costs incurred in the laying of this additional levy from between the seventh and twenty-eighth days of March and the third Tuesday in April until May 31, 2013.

Be it enacted by the Legislature of West Virginia:

THE CITY COUNCIL OF THE CITY OF OCEANA MEETING AS A LEVYING BODY EXTENDED.

§1. Extending time for the city council for the city of Oceana to meet as a levying body for an election to supplement current funds for the city park and pool operation and for the purpose of paying all costs incurred in the laying of the additional levy.

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the Code of West Virginia, 1931, as amended, the city
3 council of the city of Oceana, Wyoming County, is authorized to
4 extend the time for its meeting as a levying body, setting the levy
5 rate and certifying its actions to the State Auditor and the State
6 Tax Commissioner from between March 7 and March 28 and the
7 third Tuesday in April until May 31, 2013, for the purpose of
8 submitting to the voters of the city of Oceana the question of
9 supplementing current funds for the city park and pool operation
10 and for the purpose of paying all costs incurred in the laying of
11 this additional levy.

CHAPTER 212

(S. B. 561 - By Senators Williams, Unger, Sypolt and Miller)

[Passed April 11, 2013; in effect from passage.]

[Approved by the Governor on April 29, 2013.]

AN ACT to establish the Tucker County Cultural District Authority; providing legislative findings; forming the Tucker County Cultural District Authority; providing for appointment of members; providing for organization and bylaws; requiring quarterly meetings; providing for quorum; authorizing proxy voting; providing for parliamentary procedure; providing for certain powers and duties of the board; establishing funding priorities; allowing public and private partnerships; granting certain specific authority to the president of the authority; requiring cooperation of state agencies; and allowing various municipalities, boards, commissions, agencies and others to assist the authority.

Be it enacted by the Legislature of West Virginia:

TUCKER COUNTY CULTURAL DISTRICT AUTHORITY.**§1. Legislative Intent.**

1 The Legislature finds and declares that:

2 (1) The many and varied outdoor recreational activities in
3 Tucker County, West Virginia, have long been an important
4 element in a mature tourism industry for this state.

5 (2) The two great state parks at Blackwater Falls and Canaan
6 Valley, the Canaan Valley National Wildlife Refuge, the
7 Blackwater Canyon, the Monongahela National Forest making
8 up fifty percent of land in Tucker County, and the towns of
9 Parsons, Thomas, Davis, Hambleton and Hendricks, are sources
10 of pride to all West Virginians and mainstays of the important
11 tourism industry in this state.

12 (3) Tucker County, West Virginia, is the home to a growing
13 number of artists, artisans and patrons of the performing arts.
14 The burgeoning cultural tourism opportunities offered by the
15 performing arts compliment and enhance the outdoor
16 recreational activities already existing in the area.

17 (4) There is strong community-based support in Tucker
18 County to encourage, develop and enhance the various aspects
19 of the cultural tourism component of the regional economy.
20 Opportunities exist to create, expand and compliment areas of
21 cultural, historical, archeological and industrial heritage and
22 educational interest in Tucker County.

23 (5) The creation of additional employment and investment
24 opportunities for the present and future residents of Tucker
25 County is a desirable goal.

§2. Tucker County Cultural District Authority established.

1 (a) The Tucker County Cultural District Authority is
2 established.

3 (b) The Tucker County Cultural District Authority consists
4 of seven members, all of whom must be citizens and residents of
5 Tucker County. One of the members shall be a member of the
6 Tucker County commission, and six members shall be
7 laypersons with a demonstrated interest in cultural tourism in
8 Tucker County, recommended by the Tucker County
9 Commission and appointed by the Governor.

10 (c) Initial appointments shall be staggered for one year, two
11 years and three years, divided equally or as nearly as possible
12 between these terms. After that, terms of appointment shall be
13 for four years. Lay members may be appointed for successive
14 terms. All members, unless otherwise removed, serve until their
15 terms expire or successors have been appointed. A vacancy
16 caused by the death, resignation or removal of a member prior to
17 the expiration of his or her term shall be filled only for the
18 remainder of the unexpired term.

19 (d) The authority shall elect from its membership a
20 president, vice president, secretary and treasurer.

21 (e) The authority shall create bylaws that establish the duties
22 and obligations of the officers and members, including those
23 authorized by this act.

24 (f) No member of the authority may be paid for being a
25 member, nor may any member be reimbursed for any expense
26 related to his or her membership or travel for meetings.

§3. Meetings.

1 (a) The authority shall meet at a time and place designated
2 by the president at least quarterly or as otherwise determined by
3 the president. Additional meetings may be held when called by
4 the president or when requested in writing by at least three
5 members of the authority.

6 (b) Four members present at a meeting of the authority is a
7 quorum.

8 (c) Each member of the authority is entitled to one vote. A
9 member may assign his or her vote by written proxy.

10 (d) Robert's Rules of Order is the parliamentary guide for
11 the conduct of all meetings.

§4. General duties and powers.

1 (a) The Tucker County Cultural District Authority is
2 authorized to:

3 (1) Plan and execute an ongoing and continuous program for
4 the development and enhancement of artistic, cultural, historical
5 and recreational attractions that will promote culture, education
6 and tourism in Tucker County;

7 (2) Plan and execute a program for the restoration and
8 development of the Cottrill's Opera House in Thomas, West
9 Virginia, so as to preserve and enhance the building as a
10 significant cultural, historical and educational source of
11 importance in this state;

12 (3) Complete a comprehensive plan with a cost-benefit
13 analysis for the entire cultural district in Tucker County,
14 including, but not limited to, a large venue indoor/outdoor
15 multiple-use performance hall;

16 (4) Review all available funding sources and direct the
17 president to apply for any grants, allocations, gifts or other
18 sources of funding that may be used to further the goals of the
19 authority;

20 (5) Within the limit of available funds, from any source,
21 whether public or private:

22 (A) Apply the initial public funds received to the completion
23 of the Cottrill's Opera House in Thomas, West Virginia, as the
24 first and foremost priority of the authority;

25 (B) Award grants and stipends for the encouragement of the
26 arts in the public schools of Tucker County; and

27 (C) Award grants and stipends to individuals, not-for-profit
28 entities and other cooperatives for projects that further the
29 development of the arts in Tucker County;

30 (6) Perform other functions and employ individuals as
31 necessary to carry out the goals and purposes of the authority as
32 specified in this act;

33 (7) Own or operate, individually or in conjunction with
34 another public agency or private person, firm or corporation,
35 facilities and equipment considered necessary or convenient for
36 the implementation of the duties and goals of the authority; and

37 (8) Report to the Tucker County commission on at least an
38 annual basis, or as requested by the commission, as to the
39 progress of any plan, program or objective of the authority.

40 (b) The president of the authority, with the advice and
41 written consent or authorization of the authority, is authorized to:

42 (1) Apply for grants and other endowments in support of the
43 artistic, historical or educational programs in the cultural district
44 and the goals and objectives of the authority;

45 (2) Receive and disburse funds from governmental and
46 nongovernmental sources in furtherance of the goals and
47 objectives of the authority;

48 (3) Set up financial accounts as required and submit
49 financial reports quarterly to the authority;

50 (4) Make and execute contracts as authorized by the
51 authority; and

52 (5) Perform other duties as authorized by the authority that
53 are consistent with the goals and objectives of the authority.

§5. Cooperation of state agencies.

1 (a) All state and local governmental personnel and agencies
2 shall cooperate to the fullest extent with the authority to
3 accomplish any plan, project or program developed by the
4 authority. Those agencies shall assist in the effective
5 development of cultural, historical, education and recreational
6 activities in Tucker County that will result in the area becoming
7 a significant area for tourism, culture and education.

8 (b) Tucker County, the towns of Davis, Hambleton,
9 Hendricks, Parsons and Thomas and any other municipality in
10 the county, and any board, commission, authority, agency or
11 other office created under authority thereof, may, in its
12 discretion, engage in any activity or undertaking designed to
13 assist the authority in the proper and effective development of
14 the goals, plans, programs or projects of the authority consistent
15 with the guidelines provided in this act.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2013

CHAPTER 1

**(S. B. 1005 - By Senators Kessler, Mr. President and M. Hall)
[By Request of the Executive]**

[Passed April 18, 2013; in effect from passage.]

[Approved by the Governor on April 23, 2013.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2013, in the amount of \$10,317,860.71 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100, activity 236, and in the amount of \$7,459,913 from the Attorney General, Consumer Protection Recovery Fund, fund 1509, fiscal year 2013, organization 1500, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2013, organization 0100, to the Attorney General, fund 0150, fiscal year 2013, organization 1500, to the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2013, organization 0307, to the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2013, organization 0506, to the Higher Education Policy Commission - Administration - Control Account, fund 0589, fiscal year 2013, organization 0441, and to the Higher Education Policy Commission - System - Control Account, fund 0586, fiscal year

2013, organization 0442, by supplementing and amending the appropriations for the fiscal year ending June 30, 2013.

WHEREAS, the Governor finds that the account balances in the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100, activity 236, and in the Attorney General, Consumer Protection Recovery Fund, fund 1509, fiscal year 2013, organization 1500, exceed that which is necessary for the purposes for which the accounts were established; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated February 13, 2013, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2012, and further included the estimate of revenues for the fiscal year 2013, less net appropriation balances forwarded and regular appropriations for the fiscal year 2013; and

WHEREAS, It appears from the Governor's Executive Budget document, statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2013; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2013, in the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100, activity 236, be decreased by expiring the amount of \$10,317,860.71, and in the Attorney General, Consumer Protection Recovery Fund, fund 1509, fiscal year 2013, organization 1500, be decreased by expiring the amount of \$7,459,913, all to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2013.

And, That the total appropriation for the fiscal year ending June 30, 2013, to fund 0105, fiscal year 2013, organization 0100, be supplemented and amended by adding a new item of appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 EXECUTIVE

4 7-Governor's Office -
5 Civil Contingent Fund

6 (WV Code Chapter 5)

7 Fund 0105 FY 2013 Org 0100

8 9 10		Act- ivity	General Revenue Fund
11	1b Natural Disasters - Surplus (R) . . .	764	\$ 10,317,860

12 Any federal reimbursements received to remunerate
13 disbursement from this activity or funds transferred from this
14 activity shall be credited back to this activity.

15 Any unexpended balance remaining in the above
16 appropriation for Natural Disasters - Surplus (fund 0105, activity
17 764) at the close of the fiscal year 2013 is hereby reappropriated
18 for expenditure during the fiscal year 2014.

19 And, That the total appropriation for the fiscal year ending
20 June 30, 2013, to fund 0150, fiscal year 2013, organization 1500,
21 be supplemented and amended by increasing existing items and
22 adding new items of appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 EXECUTIVE

4 15-Attorney General

1972

APPROPRIATIONS

[Ch. 1

5

(WV Code Chapter 5, 14, 46A and 47)

6

Fund 0150 FY 2013 Org 1500

7

8

9

Act-
ivity

General
Revenue
Fund

10	1	Personal Services - Surplus.	243	\$	309,000
11	4	Employee Benefits - Surplus.	250		115,425
12	8	Equipment - Surplus (R).....	341		260,200
13	10a	Technology Improvements -			
14	10b	Surplus (R).....	725		965,020
15	11a	Operating Expenses - Surplus (R).	779		210,268

16 Any unexpended balance remaining in the above
 17 appropriation for Equipment - Surplus (fund 0150, activity 341),
 18 Technology Improvements - Surplus (fund 0150, activity 725),
 19 and Operating Expenses - Surplus (fund 0150, activity 779) at
 20 the close of the fiscal year 2013 is hereby reappropriated for
 21 expenditure during the fiscal year 2014.

22 And, That the total appropriation for the fiscal year ending
 23 June 30, 2013, to fund 256, fiscal year 2013, organization 0307,
 24 be supplemented and amended by adding a new item of
 25 appropriation as follows:

1

TITLE II — APPROPRIATIONS.

2

Section 1. Appropriations from General Revenue.

3

DEPARTMENT OF COMMERCE

4

36-West Virginia Development Office

5

(WV Code Chapter 5B)

6

Fund 0256 FY 2013 Org 0307

7				General
8			Act-	Revenue
9			ivity	Fund
10	21a	Unclassified -		
11		Transfer - Surplus	382	\$ 1,000,000

12 The above appropriation for Unclassified - Transfer -
 13 Surplus (fund 0256, activity 382) shall be transferred to the West
 14 Virginia Affordable Housing Trust Fund as established under
 15 §31-18D.

16 And, That the total appropriation for the fiscal year ending
 17 June 30, 2013, to fund 0525, fiscal year 2013, organization 0506,
 18 be supplemented and amended by increasing an existing item of
 19 appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 DEPARTMENT OF HEALTH AND HUMAN
 4 RESOURCES

5 *64-Consolidated Medical Service Fund*

6 (WV Code Chapter 16)

7 Fund 0525 FY 2013 Org 0506

8				General
9			Act-	Revenue
10			ivity	Fund
11	6	Behavioral Health Program -		
12	6a	Surplus (R)..	631	\$ 3,000,000

13 Any unexpended balance remaining in the above
 14 appropriation for Behavioral Health Program - Surplus (fund
 15 0525, activity 631) at the close of the fiscal year 2013 is hereby
 16 reappropriated for expenditure during the fiscal year 2014.

17 And, That the total appropriation for the fiscal year ending
 18 June 30, 2013, to fund 0589, fiscal year 2013, organization 0441,
 19 be supplemented and amended by adding a new item of
 20 appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 HIGHER EDUCATION

4 93-Higher Education Policy Commission -
 5 Administration -
 6 Control Account

7 (WV Code Chapter 18B)

8 Fund 0589 FY 2013 Org 0441

9 10 11	Act- ivity	General Revenue Fund
12 10a Educational Enhancements -		
13 10b Surplus (R).....	927	\$ 1,000,000

14 Any unexpended balance remaining in the above
 15 appropriation for Educational Enhancement - Surplus (fund
 16 0589, activity 927) at the close of the fiscal year 2013 is hereby
 17 reappropriated for expenditure during the fiscal year 2014.

18 The above appropriation for Educational Enhancements -
 19 Surplus (fund 0589, activity 927) is to be distributed evenly

20 between the West Virginia University School of Pharmacy and
21 the Marshall University School of Pharmacy to provide
22 scholarships to pharmacy students.

23 And, That the total appropriation for the fiscal year ending
24 June 30, 2013, to fund 0586, fiscal year 2013, organization 0442,
25 be supplemented and amended by increasing existing items of
26 appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 HIGHER EDUCATION

4 94 Higher Education Policy Commission -
5 System -
6 Control Account

7 (WV Code Chapter 18B)

8 Fund 0586 FY 2013, Org 0442

		Act-		General
		ivity		Revenue
				Fund
12	2a Unclassified - Surplus.	097	\$	250,000
13	6 WVU-School of Health Sciences -			
14	6a Surplus (R).	713		350,000

15 Any unexpended balance remaining in the above
16 appropriation for WVU-School of Health Sciences - Surplus
17 (fund 0586, activity 713) at the close of the fiscal year 2013 is
18 hereby reappropriated for expenditure during the fiscal year
19 2014.

20 From the above appropriation for Unclassified - Surplus
21 (fund 0586, activity 097) \$250,000 is for West Virginia State
22 University Land Grant Match.

23 The purpose of this bill is to expire funds into the
24 unappropriated surplus balance in the State Fund, General
25 Revenue, and to supplement, amend, increase existing items and
26 add new items of appropriation in the aforesaid accounts for the
27 designated spending units for expenditure during the fiscal year
28 2013.

CHAPTER 2

**(S. B. 1001 - By Senators Kessler, Mr. President and M. Hall)
[By Request of the Executive]**

[Passed April 17, 2013; in effect from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §7-22-9 of the Code of West Virginia, 1931, as amended, relating to permitting the Monongalia County Commission to levy a special district excise tax.

Be it enacted by the Legislature of West Virginia:

That §7-22-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§7-22-9. Authorization to levy special district excise tax.

1 (a) *General.* — County commissions have no inherent
2 authority to levy taxes and have only that authority expressly
3 granted to them by the Legislature. The Legislature is
4 specifically extended, and intends by this article, to exercise
5 certain relevant powers expressed in section six-a, article X of
6 the Constitution of this state as follows: (1) The Legislature may

7 appropriate state funds for use in matching or maximizing
8 grants-in-aid for public purposes from the United States or any
9 department, bureau, commission or agency thereof, or any other
10 source, to any county, municipality or other political subdivision
11 of the state, under such circumstances and subject to such terms,
12 conditions and restrictions as the Legislature may prescribe by
13 law; and (2) the Legislature may impose a state tax or taxes or
14 dedicate a state tax or taxes or any portion thereof for the benefit
15 of and use by counties, municipalities or other political
16 subdivisions of the state for public purposes, the proceeds of any
17 such imposed or dedicated tax or taxes or portion thereof to be
18 distributed to such counties, municipalities or other political
19 subdivisions of the state under such circumstances and subject
20 to such terms, conditions and restrictions as the Legislature may
21 prescribe.

22 Because a special district excise tax would have the effect of
23 diverting, for a specified period of years, tax dollars which to the
24 extent, if any, are not essentially incremental to tax dollars
25 currently paid into the General Revenue Fund of the state, the
26 Legislature finds that in order to substantially ensure that such
27 special district excise taxes will not adversely impact the current
28 level of the General Revenue Fund of the state, it is necessary for
29 the Legislature to separately consider and act upon each and
30 every economic development district which is proposed,
31 including the unique characteristics of location, current condition
32 and activity of and within the area included in such proposed
33 economic opportunity development district and that for such
34 reasons a statute more general in ultimate application is not
35 feasible for accomplishment of the intention and purpose of the
36 Legislature in enacting this article. Therefore, no economic
37 opportunity development district excise tax may be levied by a
38 county commission until after the Legislature expressly
39 authorizes the county commission to levy a special district
40 excise tax on sales of tangible personal property and services
41 made within district boundaries approved by the Legislature.

42 (b) *Authorizations.* — The Legislature authorizes the
43 following county commissions to levy special district excise
44 taxes on sales of tangible personal property and services made
45 from business locations in the following economic opportunity
46 development districts:

47 (1) The Ohio county commission may levy a special district
48 excise tax for the benefit of the Fort Henry economic
49 opportunity development project district which comprises three
50 hundred contiguous acres of land;

51 (2) The Harrison county commission may levy a special
52 district excise tax for the benefit of the Charles Pointe Economic
53 Opportunity Development District which comprises four
54 hundred thirty-seven acres of land; and

55 (3) The Monongalia county commission may levy a special
56 district excise tax for the benefit of the University Town Centre
57 economic opportunity district which comprises approximately
58 one thousand four hundred fifty contiguous acres of land.

CHAPTER 3

(S. B. 1003 - By Senators Kessler, Mr. President and M. Hall)
[By Request of the Executive]

[Passed April 18, 2013; in effect ninety days from passage.]

[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §50-1-3, §50-1-8, §50-1-9 and §50-1-9a of the Code of West Virginia, 1931, as amended, all relating generally to the magistrate court system; making legislative findings; adjusting the population line upon which

salaries for magistrates and certain magistrate employees are calculated; providing that the Joint Committee on Government and Finance shall request a study from the National Center for State Courts on the weighted case loads, salaries, jurisdiction and apportionment of resources within the magistrate court system; requiring presentation of report and recommendations regarding redistribution of magistrate court personnel and resources by December 1, 2014; requiring the Supreme Court of Appeals of West Virginia to present recommendations to the Legislature regarding allocation and assignment of resources; adjusting certain salaries for certain magistrates and magistrate court employees effective January 1, 2013; equalizing the pay for all magistrates and certain magistrate employees on January 1, 2017; providing for an effective date; and providing that the amendments are retroactive to January 1, 2013.

Be it enacted by the Legislature of West Virginia:

That §50-1-3, §50-1-8, §50-1-9 and §50-1-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. COURTS AND OFFICERS.

§50-1-3. Salaries of magistrates.

1 (a) The Legislature finds and declares that:

2 (1) The West Virginia Supreme Court of Appeals has held
3 that a salary system for magistrates which is based upon the
4 population that each magistrate serves does not violate the equal
5 protection clause of the Constitution of the United States;

6 (2) The West Virginia Supreme Court of Appeals has held
7 that a salary system for magistrates which is based upon the
8 population that each magistrate serves does not violate section
9 thirty-nine, article VI of the Constitution of West Virginia;

10 (3) The Administrative Office of the Supreme Court of
11 Appeals of West Virginia has stated that the utilization of a
12 two-tiered salary schedule for magistrates is no longer an
13 equitable and rational manner by which magistrates should be
14 compensated for work performed;

15 (4) Organizing the two tiers of the salary schedule into one
16 tier for magistrates serving less than seven thousand three
17 hundred in population and a second tier for magistrates serving
18 seven thousand three hundred or more in population is no longer
19 rational and equitable given current statistical information
20 relating to population and caseload; and

21 (5) That, by January 1, 2017, all magistrates should be
22 compensated equally.

23 (b) The salary of each magistrate shall be paid by the state.
24 Magistrates who serve fewer than seven thousand three hundred
25 in population shall be paid annual salaries of \$51,125 and
26 magistrates who serve seven thousand three hundred or more in
27 population shall be paid annual salaries of \$57,500.

28 (c) For the purpose of determining the population served by
29 each magistrate, the number of magistrates authorized for each
30 county shall be divided into the population of each county. For
31 the purpose of this article, the population of each county is the
32 population as determined by the last preceding decennial census
33 taken under the authority of the United States government.

34 (d) Notwithstanding any provision of this code to the
35 contrary, the amendments made to this section during the 2013
36 First Extraordinary Session are effective upon passage and are
37 retroactive to January 1, 2013.

38 (e) On or before July 1, 2013, the Joint Committee on
39 Government and Finance shall request a study by the National
40 Center for State Courts, working in conjunction with the

41 Administrative Office of the Supreme Court of Appeals of West
42 Virginia, to review the weighted case loads in each of the
43 magistrate courts in this state, and present recommendations as
44 to how the present resources and personnel in the magistrate
45 court system could be better apportioned to equitably and timely
46 meet the collective needs of the magistrate court system in West
47 Virginia. Based on the findings and data generated by that study,
48 the National Center for State Courts shall make
49 recommendations as to the equitable redistribution of personnel
50 and resources, by temporary or permanent reassignment, to
51 better meet the needs and weighted loads that are demonstrated
52 to exist in the various magistrate courts in this state. This study
53 shall be presented to the Joint Committee on Government and
54 Finance no later than December 1, 2014, and shall include
55 recommendations and proposed legislation resulting from such
56 study and shall also include a plan to continue the efficient
57 delivery of justice by the magistrate court system and the
58 justification for equalization of pay for all magistrates. As a part
59 of the submitted study, the plan shall consider the reassignment
60 of magistrates or the extension of their duties and jurisdiction to
61 include holding court or delivering services to adjacent counties
62 with higher caseloads, as part of their regular duties, or being on
63 call as needed to serve other needs in other adjacent counties or
64 within the same judicial circuit.

65 On or before January 15, 2015, the Supreme Court of
66 Appeals of West Virginia shall present its recommendations to
67 the Legislature regarding how to allocate or assign a maximum
68 of one hundred fifty- eight magistrates throughout this state to
69 improve the magistrate process, and more equitably distribute
70 the magistrate court resources to efficiently and effectively meet
71 the needs of the citizens of this state.

72 (f) Notwithstanding any provision of this code to the
73 contrary, beginning January 1, 2017, all magistrates shall be

74 compensated equally and the annual salary of all magistrates
75 shall be \$57,500.

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.

1 (a) In each county having three or more magistrates the
2 judge of the circuit court or the chief judge of the circuit court,
3 if there is more than one judge of the circuit court, shall appoint
4 a magistrate court clerk. In all other counties the judge may
5 appoint a magistrate court clerk or may by rule require the duties
6 of the magistrate court clerk to be performed by the clerk of the
7 circuit court, in which event the circuit court clerk is entitled to
8 additional compensation in the amount of \$2,500 per year. The
9 magistrate court clerk serves at the will and pleasure of the
10 circuit judge.

11 (b) Magistrate court clerks shall be paid a monthly salary by
12 the state. Magistrate court clerks serving magistrates who serve
13 less than seven thousand three hundred in population shall be
14 paid up to \$39,552 per year and magistrate court clerks serving
15 magistrates who serve seven thousand three hundred or more in
16 population shall be paid up to \$44,712 per year: *Provided*, That
17 after the effective date of this section, any general salary
18 increase granted to all state employees, whose salaries are not set
19 by statute, expressed as a percentage increase or an
20 across-the-board increase, may also be granted to magistrate
21 court clerks. For the purpose of determining the population
22 served by each magistrate, the number of magistrates authorized
23 for each county shall be divided into the population of each
24 county. The salary of the magistrate court clerk shall be
25 established by the judge of the circuit court, or the chief judge of
26 the circuit court if there is more than one judge of the circuit
27 court, within the limits set forth in this section.

28 (c) In addition to other duties that may be imposed by the
29 provisions of this chapter or by the rules of the Supreme Court

30 of Appeals or the judge of the circuit court or the chief judge of
31 the circuit court if there is more than one judge of the circuit
32 court, it is the duty of the magistrate court clerk to establish and
33 maintain appropriate dockets and records in a centralized system
34 for the magistrate court, to assist in the preparation of the reports
35 required of the court and to carry out on behalf of the magistrates
36 or chief magistrate if a chief magistrate is appointed, the
37 administrative duties of the court.

38 (d) The magistrate court clerk, or if there is no magistrate
39 court clerk in the county, the clerk of the circuit court, may issue
40 all manner of civil process and require the enforcement of
41 subpoenas and subpoenas duces tecum in magistrate court.

42 (e) Notwithstanding any provision of this code to the
43 contrary, the amendments made to this section during the 2013
44 First Extraordinary Session are effective upon passage and are
45 retroactive to January 1, 2013.

46 (f) Beginning January 1, 2017, the annual salary of all
47 magistrate court clerks is \$44,720. After the effective date of this
48 section, a general salary increase granted to state employees,
49 whose salaries are not set by statute, expressed as a percentage
50 increase or an across-the-board increase, may also be granted to
51 magistrate court clerks.

§50-1-9. Magistrate assistants; salary; duties.

1 (a) In each county there shall be one magistrate assistant for
2 each magistrate. Each magistrate assistant shall be appointed by
3 the magistrate under whose authority and supervision and at
4 whose will and pleasure he or she shall serve. The assistant shall
5 not be a member of the immediate family of any magistrate and
6 shall not have been convicted of a felony or any misdemeanor
7 involving moral turpitude and shall reside in the State of West
8 Virginia. For the purpose of this section, "immediate family"
9 means the relationships of mother, father, sister, brother, child or
10 spouse.

11 (b) A magistrate assistant shall have the duties, clerical or
12 otherwise, assigned by the magistrate and prescribed by the rules
13 of the Supreme Court of Appeals or the judge of the circuit court
14 or the chief judge of the circuit court if there is more than one
15 judge of the circuit court. In addition to these duties, magistrate
16 assistants shall perform and are accountable to the magistrate
17 court clerks with respect to the following duties:

18 (1) The preparation of summons in civil actions;

19 (2) The assignment of civil actions to the various
20 magistrates;

21 (3) The collection of all costs, fees, fines, forfeitures and
22 penalties which are payable to the court;

23 (4) The submission of moneys, along with an accounting of
24 the moneys, to appropriate authorities as provided by law;

25 (5) The daily disposition of closed files which are to be
26 located in the magistrate clerk's office;

27 (6) All duties related to the gathering of information and
28 documents necessary for the preparation of administrative
29 reports and documents required by the rules of the Supreme
30 Court of Appeals or the judge of the circuit court or the chief
31 judge of the circuit court if there is more than one judge of the
32 circuit court;

33 (7) All duties relating to the notification, certification and
34 payment of jurors serving pursuant to the terms of this chapter;
35 and

36 (8) All other duties or responsibilities whereby the
37 magistrate assistant is accountable to the magistrate court clerk
38 as determined by the magistrate.

39 (c) Magistrate assistants shall be paid a monthly salary by
40 the state. Magistrate assistants serving magistrates who serve
41 less than seven thousand three hundred in population shall be
42 paid up to \$36,048 per year and magistrate assistants serving
43 magistrates who serve seven thousand three hundred or more in
44 population shall be paid up to \$39,348 per year: *Provided*, That
45 after the effective date of this section, any general salary
46 increase granted to all state employees, whose salaries are not set
47 by statute, expressed as a percentage increase or an
48 across-the-board increase, may also be granted to magistrate
49 assistants. For the purpose of determining the population served
50 by each magistrate, the number of magistrates authorized for
51 each county shall be divided into the population of each county.
52 The salary of the magistrate assistant shall be established by the
53 magistrate within the limits set forth in this section.

54 (d) Notwithstanding any provision of this code to the
55 contrary, the amendments made to this section during the 2013
56 First Extraordinary Session are effective upon passage and are
57 retroactive to January 1, 2013.

58 (e) Beginning January 1, 2017, the annual salary of all
59 magistrate assistants is \$39,348. After the effective date of this
60 section, a general salary increase granted to state employees,
61 whose salaries are not set by statute, expressed as a percentage
62 increase or an across-the-board increase, may also be granted to
63 magistrate assistants.

§50-1-9a. Magistrate court deputy clerks; duties; salary.

1 (a) Whenever required by workload and upon the
2 recommendation of the judge of the circuit court, or the chief
3 judge of the circuit court if there is more than one judge of the
4 circuit court, the Supreme Court of Appeals may, by rule,
5 provide for the appointment of magistrate court deputy clerks,
6 not to exceed seventy-two in number. The magistrate court

7 deputy clerks shall be appointed by the judge of the circuit court,
8 or the chief judge if there is more than one judge of the circuit
9 court, to serve at his or her will and pleasure under the
10 immediate supervision of the magistrate court clerk.

11 (b) Magistrate court deputy clerks shall have the duties,
12 clerical or otherwise, as may be assigned by the magistrate court
13 clerk and as may be prescribed by the rules of the Supreme Court
14 of Appeals or the judge of the circuit court or the chief judge if
15 there is more than one judge of the circuit court. Magistrate court
16 deputy clerks may also exercise the power and perform the
17 duties of the magistrate court clerk as may be delegated or
18 assigned by the magistrate court clerk.

19 (c) A magistrate court deputy clerk may not be an immediate
20 family member of any magistrate, magistrate court clerk,
21 magistrate assistant or judge of the circuit court within the same
22 county, may not have been convicted of a felony or any
23 misdemeanor involving moral turpitude and must reside in this
24 state. For purposes of this subsection, "immediate family
25 member" means a mother, father, sister, brother, child or spouse.

26 (d) Magistrate court deputy clerks shall be paid an annual
27 salary by the state on the same basis and in the same amounts
28 established for magistrate assistants in each county, as provided
29 in section nine of this article.

30 (e) Notwithstanding any provision of this code to the
31 contrary, the amendments made to section nine of this article
32 during the 2013 First Extraordinary Session, and the effects of
33 those amendments on subsection (d) of this section, are effective
34 upon passage and are retroactive to January 1, 2013.

35 (f) Beginning January 1, 2017, the annual salary of all
36 magistrate court deputy clerks is \$39,348. After the effective

37 date of this section, a general salary increase granted to state
38 employees, whose salaries are not set by statute, expressed as a
39 percentage increase or an across-the-board increase, may also be
40 granted to magistrate court deputy clerks.

CHAPTER 4

**(H. B. 105 - By Mr. Speaker, Mr. Thompson
and Delegate Armstead)
[By Request of the Executive]**

[Passed April 18, 2013; in effect from passage.]
[Approved by the Governor on May 3, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-11c, relating to administration of local sales and use taxes and local excise taxes; granting the Tax Commissioner exclusive responsibility for administering, collecting and enforcing specified local sales and use taxes and excise taxes; specifying jurisdiction and standing before the Office of Tax Appeals; authorizing the Tax Commissioner to propose for promulgation legislative rules to assess a fee for the administration, collection and enforcement of specified local sales and use taxes and excise taxes; providing a special fund for deposit of the certain fees; and specifying an effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-10-11c, to read as follows:

**ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION
ACT.****§11-10-11c. State administration of local sales and use taxes and
excise taxes; jurisdiction and standing before the
office of tax appeals; rule-making authority.**

1 (a) The Tax Commissioner has exclusive responsibility for
2 administering, collecting and enforcing all local sales and use
3 taxes and excise taxes imposed pursuant to article twenty-two,
4 chapter seven of this code, section five-a, article one, chapter
5 eight of this code, article thirteen-c, chapter eight of this code
6 and article thirty-eight, chapter eight of this code.

7 (b) Pursuant to, and limited by, the provisions of section
8 eight, article ten-a of this chapter, the Office of Tax Appeals has
9 exclusive and original jurisdiction to hear disputes arising from
10 any local sales and use taxes and excise taxes for which the Tax
11 Commissioner has exclusive administration, enforcement and
12 collection responsibility. No municipality or county has standing
13 before the Office of Tax Appeals in any dispute arising under
14 any local sales and use tax and excise tax upon which the Tax
15 Commissioner has exclusive responsibility for administration,
16 enforcement and collection.

17 (c) Notwithstanding any other provision of this code to the
18 contrary, the Tax Commissioner may assess a fee, to be
19 established by legislative rule pursuant to the provisions of
20 article three, chapter twenty nine-a of this code, to be retained
21 from collections authorized by section five-a, article one, chapter
22 eight of this code, and section six, article thirteen-c, chapter
23 eight of this code: *Provided*, That the fee may not exceed five
24 percent of such collections in total including any fee otherwise
25 authorized by this code or any duly enacted ordinance.

26 (d) Establishment of special revenue account.

27 (1) There is created in the State Treasury a special revenue
28 revolving fund account known as the "Local Sales Tax and

29 Excise Tax Administration Fund”. Expenditures from the fund
30 shall be for the purposes set forth in this section and are not
31 authorized from collections but are to be made only in
32 accordance with appropriation by the Legislature and in
33 accordance with the provisions of article three, chapter twelve of
34 this code: *Provided*, That for the fiscal year ending June 30,
35 2014, expenditures are authorized from collections rather than
36 pursuant to appropriation by the Legislature. The fund shall
37 consist of:

38 (A) Any funds collected pursuant to section (c) of this
39 section; and

40 (B) Any funds received on and after July 1, 2013, from fees
41 retained by the Tax Commissioner pursuant to section six, article
42 thirteen-c, chapter eight of this code; and

43 (C) Amounts deducted and retained by the Tax
44 Commissioner under subsection (e), section eleven-a of this
45 article; and

46 (D) Any future funds appropriated by the Legislature or
47 transferred by any public agency as contemplated or permitted
48 by applicable federal or state law; and

49 (E) Any accrued interest or other return on the moneys in the
50 fund.

51 (2) On July 1, 2013, all moneys in the Tax Department
52 “Municipal Sales and Use Tax Operations Fund” established
53 under section six, article thirteen-c, chapter eight of this code
54 shall be transferred to the Local Sales Tax and Excise Tax
55 Administration Fund established in this section.

56 (3) On July 1, 2013, all moneys in the “Special District
57 Excise Tax Administration Fund” established under section
58 eleven-b of this article shall be transferred to the Local Sales Tax
59 and Excise Tax Administration Fund established in this section.

60 (4) Amounts deposited in the Local Sales Tax and Excise
61 Tax Administration Fund may be expended by the Tax
62 Commissioner for the general administration, collection and
63 enforcement of all local sales and use taxes and excise taxes
64 imposed pursuant to article twenty-two, chapter seven of this
65 code, section five-a, article one, chapter eight of this code, article
66 thirteen-c, chapter eight of this code and article thirty-eight,
67 chapter eight of this code.

68 (e) Notwithstanding the provisions of section eleven-b of
69 this article. The Tax Commissioner may prescribe by rule the
70 schedule and manner for deposits of moneys into the Local Sales
71 Tax and Excise Tax Administration Fund and any other
72 administrative and procedural requirements as may be useful or
73 necessary for the management and handling of the fund.

74 (f) Effective Date - The provisions of this section enacted in
75 2013 are effective on and after July 1, 2013.

CHAPTER 5

**(H. B. 103 - By Mr. Speaker, Mr. Thompson
and Delegate Armstead)**

[By Request of the Executive]

[Passed April 17, 2013; in effect from passage.]

[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact §12-4-14a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-3-33a, all relating to the distribution of state funds to volunteer fire departments under the Volunteer Fire Department Workers' Compensation Subsidy

Program; specifying that the subsidy provided to volunteer fire departments to offset certain workers' compensation premium increases applies to increases attributable to the fire fighting service, rapid response emergency medical service, ambulance service and diving service components of the services provided by volunteer fire departments; establishing the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund and directing that certain moneys be deposited into the fund for the program; requiring the State Fire Marshal, in consultation with the Insurance Commissioner, State Auditor, Secretary of Revenue, and Legislative Auditor, to review, assess and prepare a comprehensive report to the joint committee on government and finance on or before December 31, 2015, of steps that may be taken to meet the needs of volunteer fire departments and companies; expiring §12-4-14a and §33-3-33a of this code on June 30, 2016; and providing for the closure of the fund.

Be it enacted by the Legislature of West Virginia:

That §12-4-14a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-3-33a, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-14a. Workers' Compensation Subsidy for Volunteer Fire Departments; creation of program; Auditor to administer.

- 1 (a) For the purposes of this section:
- 2 (1) "Fiscal year" means the fiscal year of the state.
- 3 (2) "Individual base year premium" means the individual
- 4 premium that became due and payable by a volunteer fire
- 5 department after June 30, 2010, but before July 1, 2011.

6 (3) "Individual premium" means the workers' compensation
7 insurance premium due and payable by a volunteer fire
8 department for fire fighting services, rapid response emergency
9 medical services, ambulance services or diving services provided
10 by the volunteer fire department in each twelve month period
11 beginning on or after July 1, 2011.

12 (4) "Total base year premium" means the aggregate workers'
13 compensation insurance premium due and payable by all
14 volunteer fire departments for fire fighting services, rapid
15 response emergency medical services, ambulance services or
16 diving services provided by the volunteer fire departments as
17 determined by the Insurance Commissioner after June 30, 2010,
18 but before July 1, 2011.

19 (5) "Total premium" means the aggregate workers'
20 compensation insurance premium due and payable by all
21 volunteer fire departments for fire fighting services, rapid
22 response emergency medical services, ambulance services or
23 diving services provided by the volunteer fire departments in
24 each twelve month period beginning on or after July 1, 2011.

25 (b) In recognition of the burden of increasing workers'
26 compensation insurance premiums on volunteer fire
27 departments, the Legislature has determined that additional
28 funding assistance should be made available to eligible
29 departments to pay a portion of those premium increases
30 beginning with invoices due and payable on or after July 1,
31 2011.

32 (c) There is hereby established a special program which shall
33 be known as the "Volunteer Fire Department Workers'
34 Compensation Subsidy Program". The program shall be
35 administered by the State Auditor from moneys that may be
36 appropriated and designated for the program by the Legislature
37 pursuant to this section and section thirty-three-a, article three,
38 chapter thirty-three of this code.

39 (d) The State Auditor shall administer the distribution of
40 moneys appropriated for the Volunteer Fire Department
41 Workers' Compensation Subsidy Program to volunteer fire
42 departments to help defray workers' compensation insurance
43 premium increases.

44 (1) Volunteer fire departments shall request supplemental
45 funds by submitting to the Auditor the following information:

46 (A) The previous fiscal year's workers' compensation
47 premium invoices with paid receipts;

48 (B) The current fiscal year's workers' compensation
49 premium invoices showing the amount due and due date and any
50 applicable paid receipts; and

51 (C) Any other information the Auditor deems necessary for
52 administering the subsidy on forms and schedules as the Auditor
53 directs. The Auditor is authorized to set up an electronic filing
54 system at his or her discretion for filing of the aforementioned
55 information.

56 (2) After determining that there is a premium increase and
57 the amount of the premium increase for the volunteer fire
58 department requesting the subsidy, the Auditor shall make
59 disbursements in the manner set forth in subsection (e) of this
60 section subject to the following requirements:

61 (A) The volunteer fire department must be in good standing
62 with the State Fire Marshal;

63 (B) The volunteer fire department must be registered with
64 the Auditor's Office in a form and manner prescribed by the
65 Auditor prior to being eligible for consideration of any subsidy,
66 which registration must be completed no fewer than thirty days
67 prior to the due date of the workers' compensation premium;

68 (C) The volunteer fire department must agree that the
69 subsidy for its workers' compensation insurance premium
70 increase will be paid directly to its insurance carrier by the
71 Auditor and that it will timely pay the balance of the premium
72 due; and

73 (D) Should a volunteer fire department fail to pay the
74 balance of its workers' compensation insurance premium after
75 a disbursement by the Auditor and that insurance policy is
76 subsequently cancelled, the premium paid by the Auditor shall
77 be returned directly to him or her. If the Auditor does not receive
78 a reimbursement for a cancelled policy, he or she shall seek
79 reimbursement for the subsidy portion of the insurance premium
80 from the State Treasurer when the Treasurer makes the next
81 quarterly payment to the volunteer fire department pursuant to
82 sections thirty-three and fourteen-d, article three, chapter thirty-
83 three of this code.

84 (e) Beginning with the fiscal year that starts July 1, 2011,
85 and continuing in each fiscal year thereafter, after the Auditor
86 has verified that a volunteer fire department is eligible for a
87 subsidy pursuant to this section, he or she shall pay on behalf of
88 a volunteer fire department its subsidy, which is calculated by:

89 (1) Dividing the total amount of premium subsidy allocated
90 by the Legislature to the Volunteer Fire Department Workers'
91 Compensation Subsidy Program by the total premium minus the
92 total base year premium, which calculation produces the "total
93 shortfall multiplier"; and

94 (2) Multiplying the total shortfall multiplier determined in
95 subdivision (1) of this subsection by the individual premium less
96 the individual base year premium.

97 (3) In no event shall a volunteer fire department receive a
98 workers' compensation premium subsidy greater than one
99 hundred percent of its premium increase.

100 (f) For fiscal years after July 1, 2011, the Auditor shall
101 consult with the Insurance Commissioner to determine the total
102 amount of workers' compensation premium due by volunteer
103 fire departments for any subsequent fiscal year. The Auditor may
104 determine payment dates based upon information reasonably
105 available for such a determination.

106 (g) The Auditor may promulgate emergency rules and may
107 propose for promulgation legislative rules, in accordance with
108 the provisions of article three, chapter twenty-nine-a of this code,
109 as are necessary to provide for implementation and enforcement
110 of the provisions of this section.

111 (h) The volunteer fire departments' workers' compensation
112 premium subsidy program shall undergo a review to assess its
113 effectiveness after three years of operation. The Auditor shall
114 submit a report to the Joint Committee on Government and
115 Finance not later than February 1, 2015, and provide details of
116 the program operation including funds distributed and
117 departments taking advantage of the subsidy.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-33a. Excess moneys of Fire Protection Fund deposited into Volunteer Fire Department Workers' Compensation Premium Subsidy Fund; other funding; special report from State Fire Marshal by December 15, 2015; termination of program June 30, 2016.

1 (a) There is hereby established a special fund in the State
2 Treasury known as the "Volunteer Fire Department Workers'
3 Compensation Premium Subsidy Fund." The fund shall be
4 administered by the State Auditor and shall consist of moneys
5 deposited in the fund pursuant to this section, any other funds

6 appropriated by the Legislature for volunteer fire departments
7 for the purposes of section fourteen-a, article four, chapter
8 twelve of this code, and the interest or other earnings on the
9 moneys in the fund. The State Auditor shall administer the
10 distribution of moneys of the fund to volunteer fire departments
11 to help defray workers' compensation insurance premium
12 increases pursuant to section fourteen-a, article four, chapter
13 twelve of this code. Balances in the fund at the end of any fiscal
14 year shall not expire, but shall be expended for those purposes in
15 ensuing fiscal years pursuant to appropriation of the Legislature.

16 (b) Beginning July 1, 2013, and in each fiscal year thereafter
17 until June 30, 2016, the excess of the aggregate of amounts
18 collected by the commissioner that are otherwise required under
19 any provision of this code to be deposited into the Fire
20 Protection Fund over the aggregate of those amounts deposited
21 into the Fire Protection Fund during the fiscal year ending June
22 30, 2013, shall be deposited into the Volunteer Fire Department
23 Workers' Compensation Premium Subsidy Fund and expended
24 solely for the purposes established in section fourteen-a, article
25 four, chapter twelve of this code.

26 (c) On or before August 1, 2013, the commissioner shall
27 transfer \$4 million from the Fire Marshal Fees Fund created
28 under section twelve-b, article three, chapter twenty-nine of this
29 code to the Volunteer Fire Department Workers' Compensation
30 Premium Subsidy Fund to be expended solely for the purposes
31 established in section fourteen-a, article four, chapter twelve of
32 this code until June 30, 2016.

33 (d) The State Fire Marshal, in consultation with the
34 Insurance Commissioner, the State Auditor, the Secretary of
35 Revenue and the Legislative Auditor, shall conduct a review of
36 the needs of each volunteer or part volunteer fire company or
37 volunteer fire department serving in the various counties of the
38 state. On or before December 31, 2015, the State Fire Marshal

39 shall submit to the Joint Committee on Government and Finance
40 a comprehensive report of the review and the State Fire
41 Marshal's recommendations, substantiated by the findings of the
42 review, of steps that may be taken to meet the needs of and
43 sustain the volunteer and part volunteer fire companies and
44 volunteer fire departments of this state, including, but not limited
45 to, the following:

46 (1) An assessment of all current funding received by the
47 volunteer fire companies and departments, and a further
48 assessment of the funding necessary to provide the community
49 protections required for the areas served by the volunteer fire
50 companies and departments, the extent to which those needs are
51 being met, the extent to which they are not being met, and
52 recommendations of sources of funds to meet additional needs
53 and the amounts needed, if any;

54 (2) An assessment of the cost of workers' compensation
55 coverage for the volunteer fire companies and departments and
56 recommendations for any actions that may be undertaken by the
57 volunteer fire companies and departments and others to reduce
58 those costs;

59 (3) An assessment of the causes of any decline in
60 recruitment and retention of volunteer firefighters and
61 recommendations for improvements in this area, including any
62 recommendations for incentives that have a demonstrated record
63 of significant increases in recruitment and retention as well as
64 recommendations of sources of funds to provide those
65 incentives, if funds are necessary;

66 (4) An assessment of the level of financial accountability
67 that should be required of volunteer fire companies and
68 departments in order to provide the Legislature the information
69 necessary to target future funding for their activities based upon
70 the safety and fire protection needs of the various areas of the
71 state;

72 (5) An assessment of the comparative levels of funding for
73 volunteer fire companies and departments provided by counties,
74 municipalities and other political subdivisions and the means by
75 which that funding is provided, including identification of those
76 which contribute little or no funding to the volunteer fire
77 companies and departments within their jurisdictions, together
78 with recommendations for increasing those levels of
79 contributions;

80 (6) An assessment of the comparative levels of funding for
81 volunteer fire companies and departments provided by their own
82 efforts, and the means by which that funding is provided,
83 including identification of those which provide little or no
84 funding through their own efforts, together with
85 recommendations for increasing these sources of funding;

86 (7) An assessment of the comparative economic and other
87 benefits provided by the various volunteer fire companies and
88 departments to their particular counties, municipalities and other
89 political subdivisions, as well as to citizens of the local
90 communities they serve;

91 (8) An assessment of the sustainability of the current model
92 of providing fire and other protections to the citizens of rural
93 communities through volunteer fire companies and departments
94 and an assessment of alternative models for providing those
95 protections; and

96 (9) Other assessments and recommendations which the State
97 Fire Marshal deems appropriate in the circumstances.

98 (d) Upon the conclusion of the fiscal year ending June 30,
99 2016, the provisions of this section and section fourteen-a, article
100 four, chapter twelve of this code shall expire and be of no further
101 force and effect and the Volunteer Fire Department Workers'
102 Compensation Premium Subsidy Fund shall be closed. Upon

103 closure of the fund, from any balances therein remaining, the
104 State Auditor shall first, to the extent available, transfer to the
105 Fire Protection Fund an amount equal to the aggregate of funds
106 deposited into the Volunteer Fire Department Workers'
107 Compensation Premium Subsidy Fund during the fiscal years
108 ending June 30, 2014, 2015 and 2016 pursuant to subsection (b)
109 of this section that would otherwise have been required to be
110 deposited into the Fire Protection Fund, and any balances
111 thereafter remaining in the Volunteer Fire Department Workers'
112 Compensation Premium Subsidy Fund shall expire to the
113 General Revenue Fund of the state.

DISPOSITION OF BILLS ENACTED

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